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SOLICITORS' JOURNAL

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CURRENT TOPICS

Place of Appearance

IN a judgment which is, for one dealing with a comparatively minor point in the routine of High Court litigation, of generous length, PEARSON, J., has passed in review over a number of the decisions dealing with the meaning of the words "dwells," "resides" and "carries on business" as applied to the case of a corporation (*Davies* v. *British Geon, Ltd.* [1956] 2 All E.R. 404). His lordship was construing Ord. 12, rr. 4 and 5, of the R.S.C., according to which the question whether a defendant to a writ issued in a District Registry must enter his appearance (if any) in the Registry, or whether he has the option of appearing either in the Registry or at the Central Office, depends on whether he resides or carries on business within the district. Only if he does neither is the option his. An individual or a firm can be regarded as carrying on business at more than one place if the facts warrant that view. But at any rate, for the purposes of the fourth and fifth rules of Ord. 12, so the learned judge held, a corporation is deemed to have only one place of business. The dual residence cases in other fields of corporation law could not have been in the mind of the draftsman of the 1875 Rules. Further, when dealing with a corporation it is not possible, in spite of the way the Rules are expressed, to draw a distinction between residence and place of business. In the result, the defendant company, which was directed and managed in London though its only factory was in Wales, was held entitled to enter its appearance in London to a writ issued in the Cardiff District Registry.

Leave to Deliver New Bill of Costs

THE Court of Appeal has delivered judgment (*Polak* v. *Marchioness of Winchester, The Times*, 2nd June, 1956) dismissing an appeal from an order made by PEARSON, J., granting leave to withdraw a bill of costs delivered to the appellant on 7th September, 1955, and to deliver in substitution therefor a new bill differing only from the original bill in "including disbursements to counsel included in the original bill but not paid at the date when the bill came before the taxing master." Counsel's fees amounted to a large proportion, £302 14s. out of £531 14s. 3d., of the bill. Lord Justice JENKINS stated that, if the court was satisfied that the case was one in which the solicitor had acted honestly and wanted assistance, the inherent jurisdiction of the court extended to a withdrawal of a bill already delivered, where counsel's fees had not actually been paid, and the substitution of another bill, by which time the fees would have been paid.

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The judge was justified in coming to the conclusion that he would exercise his discretion in the solicitor's favour, and Lord Justice Jenkins felt that if he had been sitting as a judge of first instance he would have come to the same conclusion.

Compulsory Registration for Leicester

IN spite of the staffing and other difficulties of the Land Registry, which we discussed at p. 24, *ante*, the process of extending the areas in which registration of title is compulsory continues inexorably. The County Borough of the City of Leicester is the most recent addition, and on and after 1st October, 1957, registration of title will be compulsory on sale of land within its boundaries (Registration of Title (City of Leicester) Order, 1956: S.I. 1956 No. 826). The order was made at the instance of the city council, and it seems clear that local initiative of this kind must make any hope of reduction in Land Registry delays very difficult to achieve in present conditions.

The Dark is Light Enough

THE new and rather cabalistic traffic sign—a horizontal black band on a white background—specified in the Road Vehicles Lighting (Standing Vehicles) (Exemption) (General) Regulations, 1956 (S.I. 1956 No. 741), comes in two sizes, a handy 10 inches by 11 inches and the large, or family, size of 21 inches square, but the meaning in each case is the same. The sign will be found on or near lamp standards in roads outside London, and it indicates that the parking of certain vehicles without lights is permitted subject to conditions. The regulations, with the exception of the chief constables' discretion and the sign to mark it, are similar to those in force for London since last September, and allow also parking with parking lights only on roads subject to a 30 m.p.h. or lower speed limit, subject to conditions. They came into force on 5th June. The subject of parking lamps is very carefully gone into in the regulations, and we note that "the expression 'illuminated area' means, in relation to a lamp, the area of the orthogonal projection on a vertical plane at right angles to the longitudinal axis of the vehicle of that part of the lamp through which light is emitted." Luckily it all takes place after dark.

A Gap in Legal Aid

THE clerk to the Bradford Justices, Mr. F. W. G. OWENS, in an address to a women's club at Bingley on 24th May, drew attention to a gap in the legal aid system, in that no legal aid is available for women in maintenance cases against their husbands or for payments in affiliation cases in the magistrates' courts. As husbands "hold the purse strings" and can afford legal representation, he considered this to be unfair. The fact that a woman could obtain legal aid to take her case to the Divisional Court on a point of law was, he said, shutting the stable door after the horse had bolted. He added that he had drawn the attention of the HOME SECRETARY to the matter and the Home Secretary had admitted the soundness of his argument, but had claimed that the full implementation of legal aid in this respect at present would be too costly. Mr. Owen said that he disagreed, as legal aid was more costly at the later stage than at the earlier one, and the injustice remained.

Solicitors and Domestic and Administrative Tribunals

AMONG the matters dealt with in Sir CARLETON ALLEN'S detailed article in the first issue of *Public Law*, to which we referred last week, on Administrative Jurisdiction, is the position of solicitors in relation to the domestic jurisdiction of the Disciplinary Committee of The Law Society to strike off the Rolls, to suspend, to fine and to order costs. The appeals to the Divisional Court, the Court of Appeal, and, by leave, to the House of Lords, are detailed, and Sir Carleton comments on the "stern governance" of solicitors, in addition to which, as he observes, they differ from the other branch of the legal profession in that they are liable to civil actions for negligence. Another matter of interest to solicitors with which Sir Carleton dealt in his article is the haphazard nature of the rights, if any, of legal representation by counsel or solicitor before administrative tribunals. With regard to embargos on legal representation, Sir Carleton writes: "The professed object here is to save expense and to circumvent a possible advantage of the rich over the poor. One cannot resist the impression that there is also an element of suspicion of the devices and desires of lawyers. Again, I am a biased witness, but experience has taught me that to deny persons who are unable to express themselves the services of a competent spokesman is a very mistaken kindness. All magistrates are aware of this and are constantly embarrassed by the defendant who is not mute of malice but hopelessly inarticulate by visitation of God."

Slump in Litigation

A CORRESPONDENT writing in the *Financial Times* of 19th May stated that recent reports that a decline in litigation has caused a depression at the Bar have been generally confirmed by barristers. He pointed out that since the extension of legal aid to the county courts at the beginning of this year only one new county court judge has been appointed, and only 365 certificates were issued in the first three months of the year, although 15,000 were expected by the end of 1956. The decline in the Chancery Division is described as the worst for thirty years. The number of cases started in 1954 was 4,680, compared with 5,193 in the previous year. In the Queen's Bench Division there was a decrease of 7,082 cases in 1954, while the total proceedings in the three divisions of the High Court dropped by 6 per cent. The number of divorce cases, which has steadily declined, dropped to 29,184 in 1954. Among the many causes of the decline explored by the writer were the cost of litigation, the introduction of the Admiralty rule of contributory negligence into the law of negligence, and, strangely enough, the prosperity of industry, which, he said, accompanies a decline in litigation. He concluded that, if the decline in litigation continued, its economic effects were likely to be serious for the Bar, and added: "The suggestion is that some kind of corporate effort will have to be made to safeguard the interests of a profession whose greatest impediments are individual pride and a dominating sense of prestige." One is left wondering whether the writer is hinting that the Bar is too proud to accept fusion, or that individual members are too proud to accept briefs. If the former was intended, it should have been expressly stated, and not merely hinted. If, however, the alleged "sense of prestige" has anything to do with any claim to be adequately remunerated, the Bar does not differ remarkably in this respect from other occupations.

THE COST OF BECOMING A SOLICITOR

RECENTLY in the personal column of *The Times* there have appeared advertisements by accountants offering articles with no premium and a small salary to boys leaving school. So far, we, as a profession, have not found it necessary to take active steps to stimulate recruitment but the present state of affairs will not necessarily continue.

The Government recently published a White Paper on Technical Education (H.M. Stationery Office, Cmd. 9703) which describes substantial advances which are to be made in the field of scientific education. The objectives are to increase during the next five years by about a half the output of students from advanced courses at technical colleges, and this alone will call for building to be started during the next five years to the value of about £70m. This, however, is only the beginning of the campaign and when these objectives are secured the Government will consider what further measures are needed. The present annual output from advanced courses at technical colleges in England and Wales (including roughly 1,000 who gain degrees in science and about 500 who gain degrees in technology) is about 9,500. The Government propose, therefore, to raise the capacity of the advanced courses at technical colleges as soon as possible from 9,500 to about 15,000. It is significant that the Government believe that for the highest technological qualifications what are called "sandwich courses" will become more and more appropriate. These are courses lasting four or five years and involving alternate periods, usually of three to six months, of theoretical education in a technical college and specially designed practical training in industry. In principle this type of training, combining practical experience and theoretical instruction, resembles that which has been used for training solicitors for many years past. Whereas, however, the expanded educational system will be State-aided and in many cases free to the parents of the students, the education and training of solicitors' articled clerks will continue to be financially dependent upon the articled clerk's parents. Fortunately, there will always be those who have a vocation to the law and whom the blandishments of commerce will not attract. On the other hand there are many young men and women who consider the varying attractions of different professions and who as the years go on may find the law remarkably unattractive compared with some kind of scientific work. There are at the present time very few studentships awarded to articled clerks. The Law Society provide three each worth £40 per annum, but these are awarded on the result of the intermediate examination and no articled clerk entering upon his career can have any assurance that he will gain one. The bulk of the other awards, of which there are many, are made on the result of the final examination, and consequently any benefit which they may provide is even more problematical. In addition some assistance can be obtained from Government sources towards the cost of legal education and training.

There are two channels of entry to the profession. A young man or woman may be articled straight from school or the university for three, four or five years. In this way he or she may expect to become qualified at any age between twenty-one and twenty-eight, depending upon the university and National Service. The second channel is to take a post in a solicitor's office, starting perhaps as an office boy and working up to a managing clerk, and in the course of so doing to demonstrate such ability that the firm will give the clerk his articles. There is some evidence that this second channel of recruitment is likely to diminish. There appears to be a shortage of grammar school boys who are prepared to enter solicitors' offices without a guarantee of being given articles, while firms are naturally reluctant to give articles without some opportunity of testing the candidate over a considerable period. The result seems to be that in many areas grammar school boys are going elsewhere. Quite a number of boys from secondary modern schools go into solicitors' offices but only a minority can be of the calibre to become qualified. Unfortunately, it is the custom not to give articles to a managing clerk until he is getting on for thirty or has passed that age, and it is well known that the capacity to pass examinations diminishes once thirty is reached.

The main channel of entry is to be articled straight from school or the university and this inevitably involves a considerable amount of expense. It has been suggested to us that it costs in all about £5,500 to become a solicitor. Admittedly this calculation is based upon the proposition that from the age of seven until the age of qualification the candidate will go to a preparatory school and then to a public school and will then be articled for five years. No account is taken in this calculation of any attendance at a university. We think that this figure is somewhat unreal because in the first place quite a large number of boys will go to preparatory and public schools in any case and therefore the cost of this type of education is not necessary only for budding lawyers, and manifestly it is not essential in order to become a solicitor for a boy to go to a preparatory and a public school. In order to assess the approximate cost of becoming a solicitor it is necessary to find out what are the expenses which are incurred specifically by articled clerks. These appear to be first a premium, secondly legal education fees, thirdly examination fees, fourthly (although this is not essential) special tuition, and fifthly such things as library subscriptions. In addition, the father of a future solicitor will probably have to keep his son or daughter during the five years or less covered by the articles and in some cases provide board and lodging away from home.

Premiums

It still appears to be the general custom for premiums to be charged to articled clerks except where the clerk is related to his principal or is a managing clerk who is given his articles. It appears to be more common for articles to be given in the local government service than in private practice. The amount of the premium does not appear to have changed appreciably since before the war. It varies quite widely and so far as we can ascertain the average is about 300 guineas. The amount varies according to location, size and standing of the firm. We have heard of premiums as low as £100 and as high as £500, but for ordinary purposes it may be assumed that the premium is calculated, unconsciously perhaps, upon the basis of £50 to £80 per year of articles.

It seems to be commoner than it was before the war for articled clerks to be paid salaries. This is by no means a universal practice, but it is increasingly common to find that after a certain period, perhaps eighteen months or two years, the premium is returned to the articled clerk or to his parents in whole or in part. We have the impression that the commonest basis upon which young men and women enter the profession is by payment of a premium which is returned

partially in the form of a salary during the latter years of the articles. There are a very few firms who for various reasons take articled clerks for no premium at all, and quite a number at the other extreme who require a premium and do not undertake to return any part of that premium by way of salary.

The total bill, apart from board and lodging and pocket money, and apart from any return of premium which may be made, therefore may work out something like this :—

	£	s.	d.
Premium	315	0	0
Examination fee, intermediate and trust accounts and bookkeeping	12	0	0
Examination fee, final	20	0	0
Law school fees	78	15	0
Library subscription for five years	11	5	0
	£437	0	0

To this must be added extra tuition if and when required. If it is required for both the intermediate and the final it would cost about £65. These charges may vary if the articled clerk goes to a university to take his statutory period of instruction. Naturally, if he has taken his degree before becoming articled, part of the cost we have mentioned is reduced, but is more than offset by the cost of the university even if part is paid for out of public funds.

Expenses which were incurred before the war were the stamp duty on the articles (£80) and on admission (£25) but these were both abolished in 1947.

It may be that as time goes on we shall have to alter our attitude to recruitment to the profession. For example, it may be that the system of articles as it exists at present is becoming out of date. There are firms who say that it is not worth while taking articled clerks because they are of very little use. We think that one reason for this uselessness, if it does exist, is that the articled clerk is made to feel that he is not part of the firm and that he is something of a nuisance. People who are made to feel that they are something of a nuisance often become nuisances in fact. It might be desirable as an alternative to formal articles to enable all persons who have actually worked for a period of, say, five years in a solicitor's office, otherwise than as office boys or purely clerical workers, and who are able to exhibit a certificate of good conduct from their principals, to take the examinations as they go. In this way it would be possible to attract young men and women with some ability but no money and who are not prepared to gamble upon the possibility of being given their articles at some unspecified future date.

To become a solicitor by the normal channel a young man or woman needs character, brains and money. There is some ground for the fear that some with the necessary character and brains are deterred by the lack of money. The situation is not serious. The quality of students remains high. Yet it is wise to notice trends before they become serious. If to continue to ask for premiums in the atomic and automatic age is to mean that in the future solicitors will be intellectually inferior to the technocrats who will be running the country, we have no doubt that such a state of affairs would be a disaster.

Before we can answer the question whether all is well, we must answer one further question : What is likely to be the place of the solicitors' profession thirty years hence ? We will try to suggest some answers to this in a future article.

P. Asterley Jones

WIFE'S EVIDENCE ON CRIMINAL CHARGE

In an article at 99 Sol. J. 551 on the "Evidence of Spouses in Criminal Cases," reference was made to *R.* v. *Boucher* (1952), 36 Cr. App. R. 152, a case in which the Court of Criminal Appeal quashed a conviction because the evidence of the defendant's wife had been given for the prosecution. As is well known, the evidence of the defendant's spouse is admitted for the prosecution only in certain cases, which are mentioned in the article quoted and in the text-books. It seems, however, that the fact that a spouse gives evidence for the prosecution will not necessarily result in the conviction being quashed if that evidence adds nothing to the case for the prosecution. In *Parson* v. *Tomlin* (1956), 120 J.P. 129, the defendant was charged with driving at a dangerous speed contrary to s. 11 of the Road Traffic Act, 1930. His wife gave evidence for the prosecution, but the Divisional Court, on appeal from a conviction by the magistrates, refused to quash the conviction as her evidence had added nothing to the prosecution's case and there was abundant evidence to support the conviction otherwise.

It was apparently never argued that the evidence of the wife might have been admissible under the Children and Young Persons Act, 1933, s. 15, which makes the defendant's spouse a competent witness (but not a compellable one) for the prosecution in any case relating to an offence mentioned in Sched. I to that Act. The schedule mentions manslaughter of a child or young person, certain offences of violence or cruelty to a juvenile, sexual offences against a juvenile and neglect cases and also "any other offence involving bodily injury to a child or young person." In *Parson* v. *Tomlin*, *supra*, a child had been killed as a result of an accident in which the defendant's car had been involved. Had he been charged with manslaughter, his wife's evidence would clearly have been admissible, and it is submitted that it would also have been admissible if he had been charged, assuming the child had not died, with causing bodily harm by furious driving contrary to s. 35 of the Offences against the Person Act, 1861. It is much more doubtful, however, if dangerous or careless driving can be regarded as an offence involving bodily injury to a child or young person, even though one may have been injured as a result of a defendant's driving. In *R.* v. *Moore* [1954] 1 W.L.R. 893 ; 98 Sol. J. 391, it was said that the term "offence involving bodily injury" should be construed as being "*ejusdem generis*" as those offences mentioned in the Schedule.

G. S. W.

Mr. Harold John Hughes, Puisne Judge, British Guiana, has been appointed a Judge at the High Court of the Eastern Region, Nigeria.

Mr. Harold V. Jackson, solicitor, of Leicester and Lutterworth, has been appointed clerk to the Lutterworth magistrates in succession to Mr. Cecil F. Bray, who retired recently.

A Conveyancer's Diary

TRUST HOLDINGS IN PRIVATE COMPANIES

THE circumstances which led to an application to the court in *Re Weiner* [1956] 1 W.L.R. 579, and p. 400, *ante*, are topical. A vast number of small and medium sized business concerns in this country are now carried on as private limited companies, and the disposal of a holding of shares in such a company as a result of the death of the principal shareholder raises many practical difficulties even in the comparatively rare case where some thought has been given to the problem beforehand. That was not, I think, the case in *Re Weiner*.

The testator gave all his residuary estate to trustees upon trust for sale and conversion with power to postpone sale and with power also to invest in the shares of a certain private limited company. Whether as a result of the composition of the estate at the death or of an exercise by the trustees of this power, at the date of the application to the court the residuary personal estate consisted of 75 per cent. of the issued capital of the company. In the events which happened the plaintiff had become entitled to 45 per cent. of the capital of the residuary trust fund, the remaining 55 per cent. thereof being then held in trust in settled shares for various other persons. The plaintiff desired the trustees to transfer to him his share in the residuary estate. The trustees took up a neutral attitude, but some of the beneficiaries entitled to settled shares in the residuary trust fund opposed this request on the ground that if it was acceded to the trust would lose control of the company, and that for that reason what would be left in trust would diminish in value.

The beneficiaries who opposed the plaintiffs' request sought to draw an analogy between the position of the plaintiff and the position before 1926 (it cannot arise now) of a person entitled to an undivided share in land, who was not entitled to have the share handed over to him when he became entitled while other shares had to be retained. The reason for this rule, as Harman, J., said in this case, was that it was notorious that such a course was less advantageous than retaining the whole of the property. (In such a case the dissatisfied beneficiary had to wait until the property as a whole could be sold, or became vested in persons absolutely entitled in undivided shares between whom and himself a partition could be made. That was a disadvantage incident to the interests of the persons entitled, and that was that.) But that rule did not apply to personalty, apart from exceptional circumstances.

Earlier cases

That was held to be so in *Re Marshall* [1914] 1 Ch. 192, a decision of the Court of Appeal, where the property in question was also a holding of shares in a limited company, although in that case the company was not a private company. But that was not, perhaps, an important distinction. The essential difference between the two cases was that in *Re Marshall* it was the trustees themselves who insisted, or attempted to insist, that the shares should not be sold or divided; their attitude was that they had a power to postpone sale, and they were entitled to exercise that power whatever the beneficiaries thought about it. The Court of Appeal upheld the well-established right of a beneficiary absolutely entitled in possession to an aliquot share of property to have that share transferred to him. A similar case was *Re Sandeman's Will Trusts* [1937] 1 All E.R. 368, in which trustees had a power to retain certain shares in a private limited company and desired to retain the shares for the purpose of maintaining control of the company. Clauson, J., held that they had no right to exercise that power to postpone sale so as to keep persons absolutely entitled out of their rights. But as in *Re Marshall* earlier, the court referred to the possibility of special circumstances (they would have to be very special circumstances) which would justify the court in refusing to give effect to the rights of the beneficiaries demanding payment or transfer. In *Re Weiner* Harman, J., followed that decision and held that the plaintiff was entitled to call for a transfer from the trustees of his 45 per cent. of the residuary trust fund.

What is needed

These decisions all go to show that neither a general power to postpone sale nor an express power to retain or invest in shares in a particular company will, ordinarily, entitle the trustees to retain shares in a particular company merely for the purpose of maintaining control of the company for an unlimited period. This is a matter which, I think, requires serious consideration where the will of a testator owning a controlling interest in a company has to be drawn. Despite the failure of the courts (if one may so put it) to apply the rule which before 1926 prohibited the dispersal of undivided shares in land while some of the shares remained in trust to personalty generally, it is just as notorious as it was in the case of undivided shares in land that a piecemeal dispersal of a controlling interest in a company may be financially most disadvantageous. The necessities of one importunate beneficiary can, as matters stand, often do serious harm to the other persons interested under the trust.

To prevent or guard against such a situation arising more than a mere power to retain or postpone the sale of the shares in question is required. A controlling interest in a company should be treated, if the testator so desires, much as if it were a business to which the testator is absolutely entitled, and the trustees should be given a specific power to retain at their discretion a sufficient proportion of the shares to enable them to maintain control of the company for a specific period. The period may be a period of years, or a period fixed by reference to the situation of the beneficiaries, but it should be framed to override the rights of an indiyidual beneficiary to call for a transfer of shares during the period. There is at present a marked discrepancy between the care which is taken (with the assistance of well-established forms and precedents in the books) to provide for the carrying on of a testator's absolutely owned business for the benefit of his estate after his death, and the imprecision of provisions for the disposal of what is for many practical purposes often the same thing, a block of shares in a private company. It is to be hoped that those who compile and revise precedents for our assistance will take note of this need and set themselves to meet it.

"A B C"

Mr. Thomas Coates, solicitor, of Edgbaston, left £24,584 (£23,409 net).

Mr. Edward Albert Goosey, solicitor, of Coventry, left £3,100 (£2,403 net).

Landlord and Tenant Notebook

BUSINESS SUB-TENANT OF PROTECTED TENANT

A PECULIAR state of affairs was examined in *Piper* v. *Muggleton* [1956] 2 W.L.R. 1093; *ante*, p. 360 (C.A.), in which the sub-tenant of a shop, part of rent-controlled premises let to her immediate landlord, was held not to be entitled to an order for a new tenancy against him because, before the hearing of her application, his landlords had determined his contractual tenancy.

The respondent in the appeal was, up to 30th January, 1956, the tenant of combined premises—shop and living accommodation—to which the Increase of Rent, etc., Restrictions Acts, 1920 to 1939, applied. He had sub-let part of the shop as a shop to the appellant on a weekly tenancy (there was some argument on whether she was tenant or licensee, but the decision was that the relationship was that of landlord and tenant). He served her with a notice to determine the tenancy, duly observing the requirements of the Landlord and Tenant Act, 1954, s. 25; it required her to notify him whether she would be willing, at the date of termination, to give up possession; and it stated that he would oppose an application for the grant of a new tenancy, and would so oppose it on the ground that he intended to occupy the holding for the purposes of a business to be carried on by him therein (s. 30 (1) (*g*)).

The appellant complied with the requirement of the notice by stating that she would not be willing to give up possession, and she applied to the county court for a new tenancy under s. 24 (1). The judgment says that she "joined" the respondent in the appeal, her immediate landlord, as respondent to her application; I find the use of the expression "joined" a little puzzling, as it appears that no one else was made a party; the superior landlords were notified, but did not appear.

The application was entered on 14th December, 1955. The respondent lodged his answer on 5th January, 1956. The superior landlords served him with notice to quit on 21st January, and it expired on 30th January. The first hearing of the application was on 3rd February and judgment was given on 10th February The county court judge then held that the respondent had been and was the appellant's "landlord" for the purposes of Pt. II of the Landlord and Tenant Act, 1954.

The definition of "landlord" in s. 44 (1) is: "Subject to the next following subsection, in this Part of this Act the expression 'the landlord,' in relation to a tenancy (in this section referred to as 'the relevant tenancy'), means the person . . . who is the owner of that *interest* in the property comprised in the relevant tenancy which for the time being fulfils the following conditions, that is to say—(*a*) that it is an interest in reversion expectant . . . on the termination of the relevant tenancy, and (*b*) that it is either the fee simple or a tenancy which will not come to an end within fourteen months or less by effluxion of time or by virtue of a notice to quit already given by the landlord . . . (2) References in this Part of this Act to a notice to quit given by the landlord are references to a notice to quit given by the immediate landlord.

Effect of the notice to quit

The Court of Appeal took a different view of the effect of the notice to quit served on the respondent (who, being protected by the Rent Acts, was not protected by Pt. II of the Landlord and Tenant Act, 1954; *ibid.*, s. 43 (1) (*c*)).

It has, of course, long been established that if a Rent Act-protected tenant sub-lets part of the dwelling-house otherwise than as a dwelling-house, or, indeed, otherwise than as a dwelling-house to which the Acts apply, that part is unprotected. The illustrations are numerous; in *Piper* v. *Muggleton* it was deemed sufficient to refer to two of them, *Gidden* v. *Mills* [1925] 2 K.B. 713 (tenant of garage and living rooms sub-let living rooms; landlord entitled to possession of garage), and *Gee* v. *Hazleton* [1932] 1 K.B. 179 (landlord recovered portion of land licensed for advertisement hoardings).

The consequence was, it was held, that when the application came before the county court (the first hearing was on 3rd February) the respondent was not the applicant's landlord; for a statutory tenant cannot, Jenkins, L.J., said, bring himself within the definition contained in s. 44: he is not the owner of *any* interest in the property.

A "once the landlord always the landlord" argument was dealt with by referring to *X.L. Fisheries, Ltd.* v. *Leeds Corporation* [1955] 2 Q.B. 636 (C.A.) (see 99 SOL. J. 656), in which a tenant had the prize of a new tenancy snatched from under his nose when his landlord, after service of the request, sold her reversion to a local authority who availed themselves of the privileges conferred by s. 57 ("modification on grounds of public interest of rights under Pt. II"). In *Piper* v. *Muggleton* it was the act of a third party that defeated the tenant; and while Evershed, M.R.'s description of the *X.L. Fisheries* case occurrence as a "change in the personality of the landlord" may not be applicable to the *Piper* v. *Muggleton* situation (in which, incidentally, the applicant is left without a claim for compensation in lieu of new tenancy against the respondent), the principle may be said to be the same. In the one case, as it were, a fairy (good or wicked) waved her wand and changed the quarry, all but dispatched, into some invulnerable beast; in the other, the wand caused the quarry to vanish altogether.

Further possibilities

The court was careful to limit its *ratio decidendi* to the fact that the respondent had ceased to be a landlord, and it gave the applicant the option of dismissal of the appeal or remitting for a re-hearing after joinder of the present respondent's landlords.

What is left open is the question whether the superior landlord's notice to quit actually destroyed the applicant's tenancy; which is likely to be important because, while "tenant" and "tenancy" are not defined either in s. 44 or elsewhere in Pt. II of the Act, it is obvious that the applicant for a new tenancy must prove that the respondent is, in the words of s. 44 (1), "the owner of that interest comprised in *the relevant tenancy* which, etc."

Caution is evidenced twice in the judgment delivered by Jenkins, L.J. The result of the notice to quit was, the judgment said, that the respondent had by the date of the hearing become a mere statutory tenant, "his statutory tenancy extending *either* to the whole of the premises *or* to the premises other than the part of the shop occupied by Miss Piper." Later: "But when he [the respondent] ceased to be a contractual, and became a statutory tenant, which change had taken place before the hearing, we think he ceased

to be 'the landlord,' *whether or not* his statutory tenancy extended to Miss Piper's part of the shop." The caution appears to be relaxed a little further on, when the judgment says: "Moreover, if Miss Piper must be held to be a tenant of her part of the shop, as, agreeing in this respect with the learned judge, we think she must be . . ."; but, apart from the fact that the context suggests that Jenkins, L.J., was directing his attention to the question of tenancy or licence, the rest of the sentence, which runs "then inasmuch as her part of the shop is used wholly for business purposes it would seem to follow that Mr. Muggleton cannot claim in relation to that part even the personal right of possession conferred on a so-called statutory tenant (see *Gidden* v. *Mills* [1925] 2 K.B. 713)" shows that the learned lord justice was concentrating on the respondent's lack of status rather than dealing with that of the applicant.

The question whether the "conversion" of a protected contractual tenancy into a statutory tenancy actually destroys unprotected sub-tenancies of the premises has not, I believe, yet come to be decided. To go into the matter, it may perhaps be useful to bear in mind that it is not the determination of the mesne tenancy that effects the "conversion"; it is the retaining of possession by virtue of the Rent Acts. One might, therefore, visualise the mesne tenant in such a case complying with a notice to quit but leaving the sub-tenant in possession of the part sub-let; and if the sub-tenant were a business, not a furnished tenant, it is, indeed, difficult to see how the mesne tenant could get rid of him.

In the "numerous illustrations" the existence of which I mentioned earlier, it has, of course, never been suggested that the sub-tenant could be a trespasser as soon as the unprotected sub-tenancy was granted; the superior landlord has taken action well after determination of the mesne tenancy. But the question that arises is whether a sub-tenant in the position of the applicant-appellant in *Piper* v. *Muggleton* could, on receiving notice to terminate from the mesne tenant, before or after expiry of the mesne tenancy in any way claim a new tenancy from the superior landlord. It is possible that limb (*b*) of the above-cited s. 44 (1) is designed to help such a sub-tenant—if he manages to hear about the impending termination of the mesne tenancy in time.

R. B.

HERE AND THERE

SURPRISE FOR THE INNOCENT

REFORM may be the first device of the political confidence trickster, as patriotism was said to be the last refuge of the scoundrel, but, when it is not that, it flourishes only in a setting of innocence and enthusiasm which is always engaging and often charming. For the innocent and the enthusiastic a good time is always coming and Utopia is only a couple of streets away. How different from the sad and the sophisticated who are always so ready to say about any well established unpleasantness: "Ah well! People are like that and there's not much you can do about it." But innocence and enthusiasm quite often get their way, only to be somewhat taken aback afterwards by the unrealised implications of what they have done. Apparently it has come as something of a surprise to the sponsors of the legal aid scheme that 78 per cent. of legally aided are demanding divorce. "This high proportion," says the report of a House of Commons Select Committee, "does not seem to have been anticipated by Parliament, but has given rise to a certain amount of criticism." Thus the National Marriage Guidance Council considers it "wholly unjustifiable that the State should spend sixty times as much to facilitate divorce litigation as it does in grants towards agencies working for conciliation and the conservation of family life," that is to say, £750,000 a year as against £12,000. The Select Committee urged the bringing into operation of those parts of the Legal Aid and Advice Act, 1949, which provide for the giving of advice before litigation is initiated. Lord Goddard had told the Committee that to give legal aid before legal advice had always seemed to him to be putting the cart before the horse. Another opinion expressed was that matrimonial advice might well scotch trouble before the litigation stage, but that the moment the parties reached that stage the machinery took them in its grip.

INS AND OUTS

BUT right from the first institution of the Divorce Court matrimonial law reformers have been pained and astonished to discover how much truth there was in the cynical statement that marriage is like a besieged fortress; those outside want to get in and those inside want to get out. Yet, the astonishing thing is that, in a time which has, to such an extent, jettisoned or anyhow side-stepped belief in the Christian religious view of life and time and eternity, there are so many people standing insecurely on this bank and shoal of time who do not want to make a second or third desperate clutch at happier marriage in the short years before they slip off into the waters of the ultimate darkness. Once people are married, they seem to behave so oddly. There is no period of any year when, looking back on the chance divorce court reports of the last few weeks, one is not left standing in a wild surmise wondering whether that sort of rough and tumble is really the way the ordinary reasonable man and woman go on when they get off the Clapham omnibus and shut their own front door. Or is it that, in the nature of evidence, it can never reproduce the background of two lives, and, without that, the mere relation of words and actions seems as insane as the antics in a ballroom would if you could not hear the music? Well, anyhow, here's a recent divorce anthology.

DIVORCE ANTHOLOGY

START with the litany of matrimonial complaints of a rather nice looking British film actress of twenty-three who, after four years of marriage, was granted a divorce at Hollywood: "He constantly made derogatory and belittling remarks about my appearance and career . . . Generally he said I looked terrible. He said I had no talent as an actress and didn't see how I'd get a job. Once he met me at an airport and said I'd aged ten years and later repeated this before our friends. He said I'd better get all the work I could because by the time I was twenty-three I'd be too old . . . He would keep me up late watching television and playing cards." But even that last macabre touch of refinement in matrimonial cruelty is in quite a different class from the complaint of the thirty-three-year-old wife who obtained a divorce in Chicago because in sixteen years of married life her husband had given her 192 black eyes, which a simple arithmetical

calculation reveals as being just one black eye a month or two black eyes every two months. The precision of the count and the obvious regularity of the husband's gesture suggests a settled rhythm in their married life which, one would have thought, would after sixteen years have formed an unbreakable habit. Women, in their enigmatic way, tend to confuse the issue of matrimonial violence, and recently in an English divorce court Mr. Commissioner Edgdale, dealing with a petition by a husband alleging cruelty, said that his spinelessness had irritated his wife. She had said that he had never slapped her face, but she probably would have liked him to do so. Most women, suggested the Commissioner, like a husband who is more of a cave man. Most, perhaps, but not all. There was that other case last year in which a divorce commissioner, sapiently remembering that it takes all sorts of wives to make a marriage law, said: "I am satisfied that during the quarrels her husband hit her and bruised her. She was not very strong. If he wanted a wife he could comfortably punch he should have come to the country districts and found one." As the poet was inspired by this dictum to sing:—

"If I shall marry give me not
A whining, cowering, snivelling clot,
Who screams aloud and cries out 'Oh'
At every sickening body blow;
Who whimpers at each hearty clout
And takes the count before she's out.
Give me a girl of country stock
Who only grunts at every sock."

Divorce reformers have long been suggesting that there are worse matrimonial offences than adultery and the courts are already accepting the view that there are worse forms of cruelty than violence. And what is the worst form of cruelty? In a country like England where Rover is the household god can you doubt it? Then let another divorce judge speak: "It shows an abnormal hatred of his wife. A man may quarrel with his wife, strike her, but no reasonable man would steal her dog."

RICHARD ROE.

BIRTHDAY LEGAL HONOURS

PRIVY COUNCILLOR

ARTHUR HUGH ELSDALE MOLSON, Esq., M.P., Joint Parliamentary Secretary, Ministry of Transport and Civil Aviation. Called by the Inner Temple, 1931.

KNIGHTS BACHELOR

THOMAS ALGERNON BROWN, Esq., Chief Justice, Northern Region, Nigeria. Called by the Inner Temple, 1926.

CECIL BROOKSBY CRABBE, Esq., Chief Registrar of Friendly Societies and Industrial Assurance Commissioner. Admitted 1924.

GUY WILMOT MCLINTOCK HENDERSON, Esq., Q.C., Chief Justice, Bahamas. Called by the Inner Temple, 1923, and took silk (Uganda) 1949.

WALTER CHARLES NORTON, Esq., President, The Law Society. Admitted 1921.

RONALD ORMISTON SINCLAIR, Esq., Vice-president, East African Court of Appeal. Barrister and Solicitor of the Supreme Court of New Zealand, 1924, and called by the Middle Temple, 1939.

MAURICE GORDON WILLMOTT, Esq., Chief Chancery Master, High Court of Justice. Admitted 1919.

ORDER OF THE BATH

C.B.

LOUIS ARNOLD ABRAHAM, Esq., C.B.E., Principal Clerk of Committees, House of Commons. Called to the Bar, 1928.

ALBERT GORDON NEWMAN, Esq., C.B.E., Principal Assistant Solicitor, Office of Her Majesty's Procurator General and Treasury Solicitor. Admitted 1920.

ORDER OF ST. MICHAEL AND ST. GEORGE

C.M.G.

LEONARD EDWARD BISHOP STRETTON, Esq., a Judge of County Courts, and Chairman of Courts of General Sessions, State of Victoria.

RICHARD ORME WILBERFORCE, Esq., Q.C., Senior Legal Adviser, British Delegation to the International Civil Aviation Organisation. Called by the Middle Temple, 1932, and took silk 1954.

ROYAL VICTORIAN ORDER

C.V.O.

SEYMOUR JOLY DE LOTBINIERE, Esq., O.B.E. Called by Lincoln's Inn, 1930.

M.V.O. (FOURTH CLASS)

HENRY JOHN WASBROUGH, Esq. Admitted 1923.

ORDER OF THE BRITISH EMPIRE

K.B.E.

Sir EDWIN SAVORY HERBERT. Admitted 1920.

C.B.E.

JOHN MARTEN LLEWELLYN EVANS, Esq., M.B.E., T.D., Official Solicitor, Supreme Court of Judicature. Admitted 1934.

HENRY FAZACKERLEY, Esq. Admitted 1905.

CECIL ALBERT GOOD, Esq., President of the Court of Appeal for Cyrenaica. Called by Lincoln's Inn, 1913.

JOHN SILVESTER HUTCHEON, Esq., Q.C., of Albion, Queensland. For services to cricket.

JOHN KENNETH TREVOR JONES, Esq., Assistant Legal Adviser, Home Office. Called by Lincoln's Inn, 1937.

JOHN MEGAW, Esq., T.D., Q.C., Member of the Industrial Injuries Advisory Council. Called by Gray's Inn, 1934, and took silk 1953.

CHARLES MELVILLE MELVILLE, Esq., M.C., Assistant Solicitor, Metropolitan Police Force. Admitted 1911.

FRANCIS ERNEST PIPER, Esq., President of the Law Society, State of South Australia.

Miss EDITH MARY PRICE, B.E.M., Senior Registrar, Her Majesty's Land Registry. Called by the Inner Temple, 1924.

BERNARD DONALD STOREY, Esq., O.B.E., Town Clerk, Norwich. Admitted 1923.

SYDNEY GEORGE TURNER, Esq., Q.C. Called by the Middle and Inner Temples, 1906, and took silk 1931.

O.B.E.

WILLIAM DOVER WAY BUCKELL, Esq., M.C., Chairman, Isle of Wight National Insurance Local Tribunal. Admitted 1913.

HAMISH HUSTLER HOWARD COATES, Esq., District Probate Registrar, Wakefield.

ALASTAIR DOUGLAS FYFE, Esq. Admitted 1932.

HUMPHREY LESLIE MALCOLM OXLEY, Esq., Senior Legal Assistant, Commonwealth Relations Office. Admitted 1933.

JAMES WHITESIDE, Esq., Clerk to the Justices for the City of Exeter. Admitted 1933.

ARTHUR WILLIAM WOOD, Esq., Clerk and Solicitor, Yorkshire Ouse River Board. Admitted 1932.

M.B.E.

JOHN MARRIOTT COLE, Esq, lately Principal Clerk, Supreme Court Taxing Office.

NOTES OF CASES

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Judicial Committee of the Privy Council

DEATH DUTY: SETTLEMENT: INTEREST RETAINED BY TESTATOR

Commissioner of Stamp Duties of New South Wales *v.* Permanent Trustee Company of New South Wales

Viscount Simonds, Lord Morton of Henryton, Lord Cohen, Lord Keith of Avonholm, Lord Somervell of Harrow. 16th May, 1956

Appeal from the High Court of Australia.

The testator, Arthur Henry Davies, who died domiciled in New South Wales on 28th January, 1946, by a deed of settlement of 13th August, 1924, had transferred to the respondent trust company certain shares, property and investments on trust to apply the whole or such part of the income thereof as the respondent company should think fit for the maintenance, education and general support of his daughter, Muriel Norah Davies, until she should attain the age of thirty or marry, and on her attaining that age to pay over to her the balance of the trust fund with all accumulations of income for her sole and separate use. The testator's daughter married on 1st July, 1938, and attained the age of thirty on 22nd February, 1940. Meanwhile, on 1st December, 1938, pursuant to the testator's instructions, she wrote to the respondent company authorising them to take instructions from her father in all matters regarding her trust and in a new account which he was opening in the Bank of New South Wales in her name; on 29th December she wrote to that bank authorising her father to operate on her account in the fullest possible manner—and it was found as a fact that the testator had authority to withdraw money from that account without first obtaining his daughter's approval; and on 9th January, 1939, she instructed the respondent company to pay into her account at the bank any money coming in from the trust, and that was done. Up to April, 1943, the testator had drawn out practically the whole of the moneys paid into the account and used the greater part for his own purposes. It did not appear that the daughter at any time herself drew on her account, nor did she revoke any authority she had given before the testator's death. It was common ground that the sums thus withdrawn by the testator from his daughter's account were to be regarded as loans made by her to him without interest. On the footing that the sums in question were loans, the appellant, the Commissioner of Stamp Duties, in assessing the death duty payable in respect of the estate of the testator, included therein the sum of £38,162 representing the value of the trust property at the date of his death. By s. 102 of the Stamp Duties Act, 1920–40, of New South Wales: " For the purposes of the assessment and payment of death duty . . . the estate of a deceased person shall be deemed to include . . . (2) . . . (*d*). Any property comprised in any gift made by the deceased at any time . . . of which *bona fide* possession and enjoyment has not been assumed by the donee immediately upon the gift and thenceforth retained to the entire exclusion of the deceased or of any benefit to him of whatsoever kind or in any way whatsoever . . ." The Supreme Court of New South Wales unanimously held that the sum in question was rightly included in the dutiable estate. The respondent company, the executor of the will of the testator, appealed from that decision to the High Court of Australia which, by a majority, reversed it. The Commissioner of Stamps now appealed.

VISCOUNT SIMONDS, giving the judgment, said that the inference was inevitable that from 1939 onwards the testator was master of the income as it was paid over by the trustee, and the conclusion was irresistible that the daughter did not retain *bona fide* possession and enjoyment of the trust property to the entire exclusion of her father or of any benefit to him. The design and result of the arrangement were that the daughter's possession and enjoyment were reduced and impaired precisely by the measure of the testator's use and enjoyment of her income. The transaction must be viewed as a whole and, since an integral part of it was that the testator before the account was opened was authorised to draw on it for his own purposes, it was irrelevant whether, when he did draw on it, he was or was not under any obligation to repay. Gift or loan, he for his own advantage used her money, paying no interest for it, and by so much reduced her enjoyment of what was her trust income and nothing else. The case fell in line with *O'Connor* v. *Commissioner of Succession Duties* (*S.A.*) (1932), 47 C.L.R. 601. Appeal allowed.

APPEARANCES: *Gordon Wallace*, Q.C., *Anthony Cripps* and *J. S. Hobhouse* (*Light & Fulton*); *Sir Garfield Barwick*, Q.C., and *J. G. Le Quesne* (*Bell, Brodrick & Gray*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

SHIPPING: BILL OF LADING INCORPORATING UNITED STATES CARRIAGE OF GOODS BY SEA ACT, 1936: " A PORT IN THE UNITED STATES "

Stafford Allen & Sons, Ltd. *v.* Pacific Steam Navigation Co.

Denning, Birkett and Parker, L.JJ. 19th April, 1956

Appeal from Sellers, J.

Section 13 of the United States Carriage of Goods by Sea Act, 1936, provides: " This Act shall apply to all contracts for carriage of goods by sea to or from ports of the United States in foreign trade. As used in this Act, the term ' United States ' includes its districts, territories, and possessions." A clause paramount in the Royal Mail Lines, Ltd. (North Pacific Coast Service) bill of lading provided that all the terms and provisions of the United States Carriage of Goods by Sea Act, 1936, should apply " with respect to shipments from a port in the United States." On a claim concerning goods shipped on the terms of that bill of lading from the port of Cristobal in the Panama Canal Zone to London a preliminary question arose for the determination of the court as to whether Cristobal was a " port in the United States " such that the Act of 1936 had to be read into the contract contained in the bill of lading. An agreed statement of facts stated, *inter alia*, that the rights of the United States of America in and over the Zone derived from a treaty of 1903, art. 3 of which provided that " the Republic of Panama grants to the United States all rights, power and authority within the Zone . . . which the United States would possess and exercise if it were the sovereign of the territory . . . to the entire exclusion of the exercise by the Republic of Panama of any such sovereign rights, power or authority."

DENNING, L.J., said that in construing this clause the court must have regard to the law of the port of shipment and attribute to the ship-owning company an intention to do what was lawful by the local law. The law of the Panama Canal Zone on this matter was said to be contained in the United States Carriage of Goods by Sea Act, 1936, and the crucial words of that Act for present purposes were these: " The term ' United States ' includes its districts, territories and possessions." If the court gave the word " possession " in this Act its ordinary meaning, the Canal Zone was a possession of the United States; and on the material before the court it seemed to his lordship that the term " United States " in the Act of 1936 included the Panama Canal Zone. That meant that the local law affecting shipments from Cristobal required the shipowners to insert in the bill of lading a paramount clause bringing the Act of 1936 into operation. That was a most material circumstance to be borne in mind in construing this paramount clause. So construed, it seemed to him that a " port in the United States " in the clause meant a port in the United States, its districts, territories and possessions. Cristobal was such a port. The paramount clause therefore brought into operation the terms and provisions of the Act.

BIRKETT, L.J., delivered a concurring judgment.

PARKER, L.J., also concurring, said that the object in any question of construction was to ascertain what the parties intended by the words they used. Here the plaintiffs were the owners of goods on a steamship owned by the defendant shipowners. The contract in question was a bill of lading evidencing a contract for the carriage of those goods. It was well known that both the United States and this country had adopted the Hague Rules. Accordingly, when one found a clause paramount dealing with shipments from ports in the United States, it was obvious to anybody in trade that the paramount clause had been inserted by the shipowners against their interest to comply with the local

law, in this case the law of the United States, and the application of the clause must be presumed to be co-extensive with the application of the Act. There was evidence before the court that for the purposes of the Act of 1936, Cristobal in the Canal Zone was a possession of the United States within the definition in that Act. Appeal dismissed.

APPEARANCES: *G. G. Honeyman*, Q.C., and *J. S. Wordie* (*Hill, Dickinson & Co.*); *H. V. Brandon* (*Clyde & Co.*).

[Reported by Miss M M HILL, Barrister-at-Law]

JUSTICES: LIMITATION: ACTION FOR FALSE IMPRISONMENT AND MONEY PAID UNDER MAINTENANCE ORDER

O'Connor *v.* Isaacs and Others

Singleton, Morris and Romer, L.JJ. 27th April, 1956.

Appeal from Diplock, J. ([1956] 2 W.L.R. 585; *ante*, p. 171).

The Justices Protection Act, 1848, provides by s. 2: "And be it enacted, that for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby, or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously, and without reasonable and probable cause: Provided nevertheless, that no such action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed, either upon appeal or upon application to Her Majesty's Court of Queen's Bench; nor shall any such action be brought for anything done under any such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter, until after such conviction or order shall have been quashed as aforesaid . . ." The plaintiff's wife took out a summons under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925, alleging that the plaintiff had been guilty of persistent cruelty and seeking a separation and maintenance order. At the hearing the justices made an order that, although the allegation of persistent cruelty was not proved, the plaintiff was to pay his wife maintenance. The plaintiff fell into arrears with his payments and, as a result, on three occasions, the last in 1945, was imprisoned. The amount payable under the original order was varied from time to time. On 6th October, 1954, the Divisional Court of the Probate, Divorce and Admiralty Division discharged the original order and the variation orders. On 21st December, 1954, the plaintiff issued a writ against the justices who made the orders, claiming damages for false imprisonment and in respect of the money paid by him to his wife under the orders. The defendants relied *inter alia* on s. 21 of the Limitation Act, 1939. It was conceded that as the matrimonial offence charged before the justices had not been proved, the justices had no jurisdiction to make the maintenance order which was bad on its face. Diplock, J., dismissed the action. The plaintiff appealed.

SINGLETON, L.J., said that, on the issue of false imprisonment, the effect of s. 21 of the Limitation Act, 1939, was that on a claim of this nature action must be brought within twelve months from "the date on which the cause of action accrued." Each of the terms of imprisonment of which complaint was made had ended many years before action brought. To overcome that difficulty, the plaintiff contended that by virtue of s. 2 of the Act of 1848 the cause of action did not arise until the order had been quashed by the Divisional Court in October, 1954, and that argument had been backed by the citation of a number of authorities. Ordinarily, in a case of false imprisonment, the assumption would be that the imprisonment was the cause of action. For the defendants, reliance was placed on *Haylock* v. *Sparke* (1853), 1 El. & Bl. 471, decided under the Act, where it was held that "notice of action against a justice of the peace for an act done by him in the execution of his office, under an order, in a matter of which he has not jurisdiction, may be given before the quashing, although the action itself, by s. 2, cannot be brought until after the quashing." That decision had the support of authority. The cause of action must be regarded as having arisen not later than the time of imprisonment in each case, so that the first claim was statute-barred. Regarding the second claim for money paid, it was agreed that the effect of the Limitation Acts of 1939 and 1954 was that the plaintiff could not go further back than one year before the passing of the latter Act on 4th June, 1954. The effect of s. 2 of the Act of 1848 was to preserve common-law rights of action existing before, subject to the protection given by the proviso. The first question was whether before 1848 there was a cause of action against justices to recover payments made under an order which was bad on the face of it. There was no record in the books of any such case, though there were cases in which damages had been recovered in respect of trespass to the person or to goods: the defendants contended that there was no cause of action known to the common law, and that there was no need for the plaintiff to pay under a bad order, and that the money was paid under a mistake of law. Diplock, J., had dismissed the claim, as it could not be for money had and received, as the justices had not received it, and it had been paid under a mistake of law shared by the justices and the plaintiff. That was correct; further, the section preserved a right of action in respect of an "act done," which must mean something, e.g., trespass, done by someone other than the plaintiff; it could not include the act of the plaintiff himself in paying money. The second claim failed also.

MORRIS and ROMER, L.JJ., agreed. Appeal dismissed.

APPEARANCES: *N. R. Fox-Andrews*, Q.C., and *R. L. Bayne-Powell* (*George C. Carter & Co.*); *G. G. Baker*, Q.C., and *D. Wacher* (*Wilkinson, Howlett & Moorhouse*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

RENT RESTRICTION: COMBINED PREMISES: COVENANT AS TO TRADES CARRIED ON: LET AS SEPARATE DWELLING

Levermore and Another *v.* Jobey

Jenkins and Hodson, L.JJ., Danckwerts, J. 1st May, 1956

Appeal from Bromley County Court.

Section 3 (3) of the Rent and Mortgage Interest Restrictions Act, 1939, provides: "... the application of the principal Acts, by virtue of this section, to any dwelling-house shall not be excluded by reason only that part of the premises is used as a shop or office or for business trade or professional purposes; ..." By virtue of s. 7 of the Act of 1939 the expression "dwelling-house" has the same meaning as in the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, s. 16, which provides: "(1) ... 'Dwelling-house' has the same meaning as in the principal Acts, that is to say, a house let as a separate dwelling or a part of a house being a part so let ..." By a lease dated 7th December, 1935, the landlord, Florence Eliza Jobey, demised to one Alice Charlotte Brown premises consisting of a shop with living accommodation behind and above it, for a term of fourteen years at a yearly rent of £75. The lessee covenanted with the lessor thus: "(11) ... And will not use or permit to be used the demised premises or any part thereof for any illegal or immoral purpose but will use and occupy the demised premises and permit them to be used and occupied as and for the trades or business of a newsvendor stationer bookseller toy merchant and tobacconist only." On the expiration of that lease in 1949, a new lease was granted to Mrs. Brown for twenty-one years, expiring on 25th December, 1970. The terms were identical with the former lease except that the rent was £100 per annum for the first three years and thereafter £125. By two deeds, dated 29th January, 1954, Mrs. Brown assigned to one Esterson the lease of the premises and the goodwill of the business of a news-agent and tobacconist carried on by her on the premises. By a deed of 16th July, 1954, Esterson assigned the lease and the goodwill of the business to Sidney Charles Levermore and Rose Winifred Levermore, the present tenants. The premises had three floors and the accommodation was as follows: On the ground floor at the front was a shop; behind that was a living-room, a dining-room and a small kitchen. On the first floor was the main sitting-room and a bedroom. Between these two floors, on a half landing, there was a bedroom, a bathroom and a w.c. On the top floor there were two small bedrooms. The main door led from the street into the shop and through the shop access could be had to the floors above. There was also a separate door from the street to the upper floors. The present tenants, as Esterson had done, lived in the rooms above and behind the shop. It appeared that the premises had been built about 1895 and

that they had always included a shop. The rateable value, net, was £52 in 1931 and £40 in 1939. The present tenants applied to the county court registrar to determine the standard rent of the premises. The registrar dismissed the application on the grounds that the premises were not "let as a dwelling-house" within the meaning of the Rent Restriction Acts. On appeal, the county court judge reversed the decision of the registrar and the matter was referred back to the registrar for determination of the standard rent in default of agreement. The landlord appealed.

JENKINS, L.J., said that the question at issue was whether the premises were let as a separate dwelling for it was only on that footing that the protection of the Acts could be claimed for them. His lordship referred to ss. 3 and 7 (1) of the Rent Restriction Act, 1939, and s. 16 (1) of the Rent Restriction Act, 1933, and to *Wolfe* v. *Hogan* [1949] 2 K.B. 194 and *Court* v. *Robinson* [1951] 2 K.B. 60, and said that it was not necessary to adduce from any of the observations in these and other cases that a letting could not be a letting of a dwelling-house in any case in which it was contemplated that any part of the premises should be used as business premises. In his (his lordship's) view what the court had in mind in the cases where lettings had been held to be business lettings was a stipulation in the lease which might be said to define the whole purpose of the letting or to preclude the use of the premises as a dwelling-house or to be inconsistent with such use. In his view the stipulations relied on in the present case by the landlord did none of these things. In its application to premises of the kind here in question covenant (11) should be construed merely as providing that a particular trade or business should be carried on and that no other trade or business should be carried on; but it did not stipulate that this should be the exclusive use of the premises, rather indicating that the business was to be carried on in the shop while the tenant was free, if so minded, to live in the upper part of the premises. He (his lordship) was fortified in this conclusion by the judgment of Lord Goddard, C.J., in the Divisional Court, in *R.* v. *Brighton and Area Rent Tribunal; ex parte Slaughter* [1954] 1 Q.B. 446. In his (his lordship's) view there was nothing in that judgment which was in conflict with the authorities above referred to. Nor was there anything in those authorities which, fairly construed, precluded the court, in construing a lease for the purpose of deciding whether it effected a letting of a dwelling-house, from looking at the subject-matter of the lease, namely, the property let, and seeing whether it was or was not adapted for living purposes. The appeal should be dismissed.

HODSON, L.J., and DANCKWERTS, J., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *John Wilmers* (*Kenneth Brown, Baker, Baker*); *Roger Willis* (*James & Charles Dodd*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

RENT RESTRICTION: "NO SUBLETTING ALLOWED": SUBLETTING OF PART

Esdaile and Others *v.* Lewis

Jenkins and Hodson, L.JJ. Danckwerts, J. 2nd May, 1956

Appeal from Bow County Court.

The plaintiffs, in their capacity as personal representatives, were the landlords of premises known as 53 Merchant Street, Bow, a dwelling-house within the protection of the Rent Acts. The tenant was formerly one Kaufman, who in April, 1955, gave notice to quit and left. The plaintiffs sought possession of the premises and found that the defendant, Fanny Lewis, was in occupation of part of the premises without their knowledge or consent. She claimed the right to remain in occupation as a person to whom part of the premises had been lawfully sublet, notwithstanding that a condition of Kaufman's tenancy was "no subletting allowed without the written consent of the landlord." She therefore remained in occupation of her part of the premises, whereupon the plaintiffs brought proceedings against her for possession. On 1st March, 1956, the county court judge refused the plaintiffs' claim for possession. The plaintiffs appealed.

JENKINS, L.J., said that the appeal turned entirely on the true construction of the words in the conditions "No subletting allowed without the written consent of the landlord." If the matter had been free from authority he would have been disposed to hold that the words "no subletting allowed" meant that there was to be no subletting at all in relation to the premises whether in whole or in part. The county court judge felt constrained to reject that view on the authority of the Court of Appeal decision of *Cook* v. *Shoesmith* [1951] 1 K.B. 752. Counsel for the plaintiff sought to distinguish that decision on the ground that the language under consideration in the present case was of wider import and that what was prohibited was the act of subletting in any shape or form. Counsel contended that that meaning could be brought out by adding after "subletting" the words "at all," so that it would read "no subletting at all allowed," that is to say, "nothing amounting to a subletting to be done at all." But just as the words "I agree not to sublet" in *Cook* v. *Shoesmith, supra*, demanded an object, so the words "no subletting allowed" demanded some subject-matter to which they could relate. "No subletting allowed" immediately raised the question, "No subletting of what?" It seemed to him (his lordship) that it was impossible to say that the subletting which was not allowed was anything other than a subletting of the premises. There was no more warrant here for adding "or any part thereof," than there would have been in *Cook* v. *Shoesmith, supra*, for adding to the words "I further agree not to sublet the premises" the words "or any part thereof." The distinction here sought to be drawn was altogether too fine to command acceptance. He would dismiss the appeal.

HODSON, L.J., delivered a concurring judgment.

DANCKWERTS, J., said that he was unable to agree. He quite agreed that if a landlord wished to restrict the rights of a tenant to dispose of his interest or part of it in the property he must use clear words, and that if there was any doubt about the proper construction of the words they should be construed against the landlord. The trouble was that the words in the present case seemed to him (his lordship) perfectly clear, namely, that there was to be no subletting whatever, and that therefore there must be no subletting of a part of the premises any more than of the whole of the premises. He would allow the appeal. Appeal dismissed.

APPEARANCES: *J. C. Lawrence* (*Barnes & Butler*); *R. Gavin Freeman* (*Breeze, Benton & Co.*).

[Reported by J. A. GRIFFITHS, Esq., Barrister-at-Law]

SHIPPING: COLLISION: DAMAGES FOR DETENTION: RISE IN FREIGHT MARKET DURING DETENTION

Dirphys (Owners) *v. Soya* (Owners) The *Soya*

Lord Evershed, M.R., Jenkins and Hodson, L.JJ.

7th May, 1956

Appeal from Willmer, J. ([1955] 1 W.L.R. 1246; 99 SOL. J. 834).

The plaintiffs' vessel *Dirphys* was in collision with the defendants' vessel *Soya* on 30th December, 1950. At the time of the collision the *Dirphys* was under a charter dated 13th October, 1950, whereby a net profit of £144 3s. 10d. was earned per day. Owing to a sharp rise in the freight market during the period of detention, the net profit earned by the *Dirphys* in the subsequent charter was £819 17s. 4d. per day. The plaintiffs claimed damages for twenty days' detention at the rate of £819 17s. 4d. per day, contending that, as a result of the collision, they had been delayed by twenty days from engaging their vessel upon a voyage at the profitable rates existing at the beginning of 1951 in the Far East; or, alternatively, twenty days' detention at a rate of profit arrived at by averaging previous and subsequent voyages. The defendants contended that the rate should be that under the charter dated 13th October, 1950, or alternatively, the mean between that rate and the rate of the voyage previous to the collision, being £203 10s. 9d. per day. Willmer, J., held that the loss of profits arising from the detention of a vessel was a question of fact to be proved with reasonable certainty, and was not a matter on which the court was entitled to speculate, and that the measure of the plaintiffs' damages for loss of profits was the equivalent of twenty days' detention at the rate of £144 3s. 10d. per day. The plaintiffs appealed.

LORD EVERSHED, M.R., said that the damage was said by the respondents to be arrived at according to a rule of convenience or practice, by multiplying the sum of £144-odd by twenty. The rule of convenience was said to be based on the judgment of Bowen, L.J., in *The Argentino* (1888), 13 P. D. 191, and the opinion of Lord Herschell in the same case in the House of Lords ((1889), 14 App. Cas. 519). He thought that those observations were not made in reference to facts such as they had here. They were

plainly made in reference to the special facts in *The Argentino*. In this case the facts appeared to be unusual, at any rate to this extent, that, as they had been informed, there was no case in the books where facts comparable to the facts in this case had ever come before the court. But if that rule were a rigid, unalterable rule, it would appear to him at any rate that somewhat strange results might follow. He thought that there was no rigid and unalterable rule of practice or convenience limiting the measure of such damages to the profit which, but for the collision, would have been earned under a charter existing at the time of detention; but that in the present case the alleged loss, arising from delay in embarking on a subsequent and more profitable period of trading was not proved with reasonable certainty and was too speculative and remote to be considered a consequence in law of the detention; and accordingly the proper measure of damages was the equivalent of twenty days' profit under the charterparty to which the *Dirphys* was bound at the time of the collision and when, in fact, the ship was being detained.

JENKINS and HODSON, L.JJ., delivered concurring judgments. Appeal dismissed.

APPEARANCES: *K. S. Carpmael*, Q.C., and *R. F. Stone* (*Holman, Fenwick & Willan*); *H. V. Brandon* and *J. F. Willmer* (*Thomas Cooper & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

DOCK: UNLOADING OF VESSELS: LIABILITY OF STEVEDORES TO REMEDY BREACH BY SHIPOWNERS OF LIGHTING REGULATIONS

Simons *v.* W. H. Rhodes & Son, Ltd., and Another

Singleton, Morris and Romer, L.JJ. 8th May, 1956

Appeal from Ashworth, J.

By reg. 12 (*c*) of the Docks Regulations, 1934, made under s. 79 of the Factories and Workshops Act, 1901, when a vessel is being unloaded in dock the shipowner is under a statutory duty efficiently to light every part of the ship to which persons employed may be required to proceed in the course of their employment. By reg. 50, if the persons whose duty it is to comply with reg. 12 fail so to do, then it shall be the duty of the employers of the persons employed for whose use the lighting is required to comply with the said regulation "within the shortest time reasonably practicable after such failure." The plaintiff, a dock labourer in the employment of the first defendants, a firm of stevedores, who were engaged when it was dark in unloading cargo from a ship lying in a Liverpool dock and owned by the second defendants, sustained injury by tripping over a cleat on the vessel's deck. The trial judge found on the evidence of the men, including the plaintiff, who had been working for five days on the vessel that the lighting was inefficient and that it had been in the same condition throughout the time that they were working there. He found that the shipowners were in breach of reg. 12, but that it had not been proved that the stevedores were in breach of reg. 50; as in the absence of any complaint by the plaintiff and his mates regarding the inadequacy of the lighting, the stevedores could say that they had not appreciated that the situation called for their intervention under reg. 50, and it was not "reasonably practicable" for them to comply with it. The shipowners appealed, asking that judgment should be entered against both defendants and their liability apportioned.

SINGLETON, L.J., said that the words of reg. 50 had been construed by Finnemore, J., in *Haywood* v. *Glen Line, Ltd.* (1955), 2 Ll. Rep. 142 to mean that the stevedores must take action as soon as they knew, or ought to have known, that the shipowners were in breach of their statutory duty. In the present case as there were the judge's findings (*a*) that the lighting was inefficient; (*b*) that it had been so throughout, and (*c*) that the evidence on the matter was that of the stevedores' men, it was difficult to say that the stevedores did not know and had no means of knowing that the lighting was inefficient. The finding of the judge amounted to a finding against both the owners and the stevedores, so that the plaintiff was entitled to judgment against both defendants. Having regard to the whole of the circumstances, there was not much distinction to be drawn between them, and the damages should be borne equally.

MORRIS and ROMER, L.JJ., agreed. Appeal allowed. Judgment against both defendants.

APPEARANCES: *D. J. Brabin*, Q.C., and *J. M. Davies* (*Botterell and Roche*, for *Weightman, Pedder & Co.*, Liverpool); *H. I. Nelson*, Q.C., and *G. B. Currie* (*Guy Williams & Co.*, Liverpool); *E. Wooll*, Q.C., and *A. D. Pappworth* (*Silverman & Livermore*, Liverpool).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

HOUSING REPAIRS AND RENTS ACT, 1954: CHALLENGE TO VALIDITY OF NOTICE OF INCREASE IN COUNTY COURT: CORRECTION OF ERRORS

London Hospital Governors *v.* Jacobs

Lord Evershed, M.R., Jenkins and Hodson, L.JJ.

10th May, 1956

Appeal from Shoreditch County Court.

In 1931 the plaintiff landlords by an agreement in writing let a dwelling-house protected by the Rent Acts to the husband of the defendant tenant, the agreement providing that the tenant was to "keep the said premises in good and tenantable repair (fair wear and tear excepted) and be responsible for and replace all broken glass and missing keys." At all times since 1931 repairs were in effect carried out by the landlords. On the death of the husband the defendant remained in occupation as statutory tenant. After the coming into force of the Housing Repairs and Rents Act, 1954, the landlords served on the tenant a notice of increase of rent under s. 25 of the Act. The tenant then obtained from the local authority a certificate under s. 26 (1) that the conditions specified by s. 23 as justifying an increase were not fulfilled; this certificate was later revoked on the landlords' application under s. 26 (4). The notice of increase and declaration were drawn up on the footing that the landlords were wholly responsible for repairs. On proceedings being brought in the county court to recover an unpaid balance of the increased rent, the landlords took a preliminary objection that the tenant could not in such proceedings challenge the landlords' assertion that paragraph (*a*) of s. 23 (1) had been complied with, her only remedy being to obtain from the local authority a certificate of the nature set out above. The judge upheld the landlords' objection, but proceeded to hear evidence. It was then contended that the tenant had no case to answer, as the notice was invalid in that it claimed the full possible statutory increase, which should have been proportionately reduced in accordance with s. 23 (2) as the tenant was partially responsible for repairs. The judge gave judgment for the landlords for the amount claimed. The tenant appealed.

LORD EVERSHED, M.R., said that s. 23 (1) imposed two conditions precedent before an increase of rent could be justified: (*a*) that the house was in good repair and reasonably suitable for occupation; and (*b*) to the effect that, in accordance with the provisions of Sched. II, satisfactory evidence had been produced that the necessary repair work had been carried out. Subsection (2) provided for the quantification of the increase, with a proviso that where the landlord was only partly responsible for repairs the quantum of the increase was to be "reduced proportionately." The tenant was contesting the landlords' claim, and the first point was the landlords' preliminary point that the terms of s. 26 prevented her from doing so. That section provided that a tenant might apply to the local authority for a certificate that the conditions justifying an increase had not been fulfilled; that certificate, while in force, precluded the landlord from obtaining an increased rent, but it could be revoked, on the landlord's application, either by the court or by the local authority on satisfactory proof that the necessary repairs had been effected, or were not necessary. The landlord could thus challenge a certificate, but there was no converse provision that the tenant could challenge in the courts the local authority's action either in refusing to grant a certificate or in revoking one after it had been made. The landlords' argument went so far as to contend that the only available remedy to the tenant when contesting the landlords' assertion that s. 23 (1) (*a*) had been fulfilled was to obtain a local authority's certificate, the jurisdiction of the courts being wholly ousted. But there was no warrant in the language of s. 26 for such an ouster, which would require very plain language to support it, as, for example, that of s. 3 of the Rent Act of 1933, where there was plain language which ousted the jurisdiction. Moreover, a tenant who complained that para. (*b*) of s. 23 (1) had not been complied with could apply to the county court under Sched. II. There was no warrant for the contention that a complaint in respect of para. (*a*) could not be raised, and the

preliminary point failed. The next point was the tenant's contention that the notice was bad, as it took no account of her partial liability for repairs. The judge had held that the fact that the landlords had always done the repairs indicated that the original terms of the letting must have been varied at some time so as to throw on the landlord the full burden of repairs; but such a conclusion was quite unjustified and contrary to the principle laid down in *Asher* v. *Seaford Court Estates, Ltd.* [1950] A.C. 508. The notice was accordingly erroneous, but the county court had power under s. 25 (4) to amend any error or omission due to a *bona fide* mistake. The proper course was to remit the case to the county court. There, the tenant could seek to prove that the conditions of s. 23 (1) (*a*) had not been fulfilled, and, if she was unsuccessful, the judge could take into consideration whether he would allow any amendments to the notice which the landlords might seek to put forward.

JENKINS and HODSON, L.JJ., agreed. Appeal allowed. Case remitted.

APPEARANCES: *R. Millner* (*Pearce & Sons*); *C. G. Armstrong Cowan* (*Hanbury, Whitting & Ingle*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

FACTORY: DANGEROUS MACHINERY: HORIZONTAL MILLING MACHINE: WHETHER STATUTORY DUTY TO FENCE SUPERSEDED BY EXEMPTION UNDER REGULATIONS

Quinn *v.* Horsfall & Bickham, Ltd.

Singleton, Morris and Romer, L.JJ. 10th May, 1956

Appeal from Glyn-Jones, J. ([1956] 1 W.L.R. 264; *ante*, p. 187).

The Horizontal Milling Machines Regulations, 1928, provide by reg. 3: "The cutter or cutters of every horizontal milling machine shall be fenced by a strong guard . . ." "*Exemptions.*—Nothing in reg. 3 shall apply to any milling cutter used on . . . (VII) automatic profiling: Provided that these exemptions shall not prejudice the application of s. 10 of the Factory and Workshop Act, 1906 [now s. 14 of the Factories Act, 1937] in regard to fencing of such machinery." The Factories Act, 1937, provides by s. 14: "(1) Every dangerous part of any machinery . . . shall be securely fenced . . ." The plaintiff, while operating a horizontal milling machine, which was engaged on the job of automatic profiling, received injury through his fingers coming into contact with the revolving cutter, which he thought had been stopped. A guard supplied with the machine was not in use at the time. In an action brought against his employers for breach of statutory duty and negligence, Glyn-Jones, J., held that the machine was at the time exempt from the duty to fence imposed by reg. 3, and that the proviso to the exemptions only ensured that s. 14 was to apply to any dangerous part of a machine other than the cutter, and gave judgment for the defendants on both claims. The plaintiff appealed.

SINGLETON, L.J., said that if the defendants' contentions, which were accepted by the judge, were right, it meant that by the regulations of 1928 an admittedly dangerous part of machinery had been taken by the Minister out of the operation of s. 10 of the old Act, and it might be wondered how he had power to do that either under s. 79 of the old Act or s. 60 of the Act of 1937. Whether or not he had such a power, it would be most odd to exercise it without providing for some other form of guard or fence. The meaning of the proviso to reg. 3 was that s. 14 applied to processes on milling cutters not covered by the regulation; that was the only sensible way to read it, having regard to the tendency of the legislation to provide additional safeguards for workmen. As s. 14 applied, the defendants were in breach as a dangerous part of the machine had not been fenced. Such neglect to fence rendered the defendants liable at common law also. Accordingly, the plaintiff's appeal succeeded. The judge had assessed the plaintiff's responsibility for the accident at 50 per cent., and the court would not interfere with that.

MORRIS and ROMER, L.JJ., agreed. Appeal allowed.

APPEARANCES: *J. Thompson*, Q.C., and *R. Lambert* (*W. H. Thompson*); *J. D. Cantley*, Q.C., and *W. D. T. Hodgson* (*Gardiner and Co.*, for *A. W. Mawer & Co.*, Manchester).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

Chancery Division

LANDLORD AND TENANT ACT, 1954: BUSINESS PREMISES: RELEVANT TIME OF INTENTION TO RECONSTRUCT

Betty's Cafés, Ltd. *v.* Phillips Furnishing Stores, Ltd.

Danckwerts, J. 7th May, 1956

Adjourned summons.

Betty's Cafés, Ltd., who were tenant of certain business premises by the present summons applied to the court under s. 24 of the Landlord and Tenant Act, 1954, for the grant of a new tenancy. The application was opposed by the landlords, Phillips Furnishing Stores, Ltd., under s. 30 (1) (*f*) of the Act on grounds set out below. Phillips Furnishing Stores, Ltd., acquired the reversion by a contract dated 25th August, 1953, at a price of £38,750; they had hoped to occupy the property for the purposes of their furniture business. The interest acquired was the remainder of a term of 999 years from 1st January, 1806, at a ground rent of £15 6s. per annum under a lease dated 1st May, 1806. Application was made to the Bradford County Court under the Leasehold Property (Temporary Provisions) Act, 1951, by the tenants for a new tenancy of the property, and on 23rd September, 1953, the court made an order for a new tenancy for a period of twelve months from 1st January, 1954, at a rental of £2,000, and on the same terms otherwise as in the existing lease. Negotiations for the purchase of the property by the tenants for £55,000 having fallen through, they decided to make an application under the Landlord and Tenant Act, 1954. On 28th June, 1955, they served a notice requesting a new tenancy of the property; and on 15th August, 1955, a notice of opposition was sent by the landlords. The grounds relied on in the notice were that on the termination of the current tenancy the company intended to reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof, and that the company could not reasonably do so without obtaining possession of the holding; and they were, therefore, entitled to possession under para. (*f*) of s. 30 (1) of the Act.

DANCKWERTS, J., said that it was on the proper construction and application of the provisions contained in para. (*f*) of s. 30 (1) of the Act that this case really depended. The provisions of this paragraph had already been considered by the Court of Appeal and had given rise to doubt and confusion. His lordship considered *Atkinson* v. *Bettison* [1955] 1 W.L.R. 1127 and *Fisher* v. *Taylor's Furnishing Stores, Ltd.* [1956] 2 W.L.R. 985; *ante*, p. 316, at length, and continued: The contentions of the landlords were based on the plans and details of work supplied by Mr. Ovenden, their architect, to Mr. Jones, the company's secretary, being work which it was intended to carry out on the determination of the current tenancy. The minutes of the landlords did not show any adoption or authorisation of these proposals by the board of directors on behalf of the company, but on Monday, 23rd April, 1956, at 10 a.m. (after the hearing had been proceeding for four days) a meeting of the board of directors was called which passed the following resolutions: "(1) That in the event of the company obtaining possession of these premises . . . on the termination of the . . . current tenancy thereof the work detailed in Mr. Ovenden's specification . . . be forthwith carried out and that expenditure up to £20,000 upon such work be approved. (2) That an undertaking to that effect should be given to the court by counsel appearing for the landlords." It seemed to him that although no reconstruction of the main walls was involved, the work proposed was a reconstruction of a substantial part of the premises, constituting the greater part of the interior; and it was a substantial work of construction within the meaning of para. (*f*) of s. 30 (1), for which possession of the holding was necessary for its carrying out. The next, and the most important question was whether the landlords intended at the material time on the termination of the current tenancy to carry out this work. The vital moment for this purpose was that of the date of the service of the notice of objection, and at that date it had to be true in fact that the landlords intended to carry out the work of reconstruction, but on the evidence the landlords were quite unable to prove any such intention. There was no minute recording any resolution of directors to carry out the works suggested by Mr. Ovenden either at the determination of the current tenancy or at any time until the conditional resolution was passed on 23rd April, 1956, which

seemed to him to be too late. In the result the landlords had not established that ground under para. (*f*). His lordship granted a new tenancy for the maximum period of fourteen years at £3,000 per annum on terms otherwise similar to those in the current tenancy. Application for new tenancy allowed.

APPEARANCES: *L. A. Blundell* and *C. B. Priday* (*Ward, Bowie & Co.*, for *Booth & Co.*, Leeds); *E. Ryder Richardson*, Q.C., and *J. P. Widgery* (*Clifford-Turner & Co.*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

Queen's Bench Division

CROWN PRACTICE: APPLICATION FOR CERTIORARI AFTER PLEA OF GUILTY TO TWO OFFENCES: ONLY ONE OFFENCE HELD PROVED

R. *v.* Campbell; *ex parte* Nomikos

Lord Goddard, C.J., Cassels and Donovan, JJ.

27th April, 1956

Application for certiorari.

The defendant, the master of a vessel, pleaded guilty to, and was convicted on, two charges of contravening reg. 5 (*b*) of the Timber Cargo Regulations, 1932, in that he loaded the fore deck and the raised quarter deck on his vessel with timber to a height in excess of the permitted maximum. He applied for an order of certiorari to bring up and quash his conviction on the charge relating to the raised quarter deck, alleging that there was only one contravention of the regulations and not two, and that, therefore, the magistrate had no jurisdiction to convict on the second charge.

LORD GODDARD, C.J., said that the first point was whether there had been one offence or two offences. The language and definitions in the regulations were unintelligible and obscure, and in attempting to decide the question whether one or two offences were committed in overloading both the fore deck and the quarter deck the only safe course was to construe the regulations in favour of the defendant and to hold that there was only one deck and so only one offence. It was next said that the magistrate should have convicted on one charge only. That was right, in a sense; but the defendant had pleaded guilty to both charges and the magistrate had no option but to convict on both, and an act done within jurisdiction could not be quashed on certiorari. If the pleas had been not guilty, after a conviction on the first charge the defendant could have argued on the lines of *autrefois convict*, and the proper remedy would have been not certiorari but an appeal. What had happened was that the defendant had wrongly pleaded guilty to and had wrongly been convicted on the second charge; but that was an error of law and not a question of jurisdiction. Again, there was no case where certiorari had been granted after a plea of guilty. Certiorari was a discretionary remedy, and the court had no power to issue it in the present case; after a plea of guilty had been entered by competent counsel, the court's discretion could be exercised only in the sense of refusing certiorari. It might be that, in the circumstances, the defendant might persuade Her Majesty's advisers to return the amount of the second fine (£250), but that was not a matter for the court.

CASSELS and DONOVAN, JJ., agreed. Application dismissed.

APPEARANCES: *M. Summerskill* (*Richards, Butler & Co.*); *R. Winn* (*Treasury Solicitor*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

ROAD TRAFFIC: EXCISE LICENCE: POWERS OF COUNTY COUNCILS TO PROSECUTE FOR TRADE LICENCE OFFENCES

R. *v.* Reigate Justices; *ex parte* Holland

Lord Goddard, C.J., Jones and McNair, JJ.

30th April, 1956

Application for mandamus.

The Vehicles Excise Act, 1949, which places the levying of duties under the Act in the hands of county councils, provides by s. 8 (2) that ". . . every county council and their officers shall have within their county for the purpose of levying the duties aforesaid the same powers, duties and liabilities as the Commissioners of Customs and Excise and their officers have with respect to duties of excise, and to the issue and cancellation of licences on which duties of excise are imposed, and other matters under the Acts relating to duties of excise and excise licences, and all enactments relating to those duties and to punishments and penalties in connection therewith shall apply accordingly." Section 15 provides for penalties in respect of certain offences in connection with licences and trade licences. The Road Vehicles (Registration and Licensing) Regulations, 1953, provide by reg. 29D for certain offences in connection with trade licences, and by reg. 35 that "the clerk of the council and any other officer authorised by the council are respectively empowered to exercise any power of the council for the purpose of carrying these regulations into effect." The applicant, an officer of the Surrey County Council, laid information against a defendant in respect of certain offences alleged to have been committed in Surrey against the Act and regulations in connection with the use of a vehicle bearing trade plates issued by the Hampshire County Council. It was objected on behalf of the defendant that the applicant was not competent to lay the information, as the only competent authority was the county council which had issued the trade plates. The justices upheld this submission and dismissed the information. The applicant moved for an order of mandamus.

LORD GODDARD, C.J., said that under s. 8 the county council had not only the duty of levying excise duties but also that of prosecution of offenders. An offending vehicle might be driven through the night, committing an offence in every county through which it passed, and only be detected and stopped in the light of the morning. There was no limitation on the right of the county council to prosecute, provided that they could show that the offence was being committed in their county. It might be that they could prosecute for an offence committed in another county. The matter was covered by s. 8, and the justices were wrong in holding that they had no jurisdiction.

JONES and MCNAIR, JJ., agreed. Order of mandamus.

APPEARANCES: *F. H. Lawton* (*Wyatt & Co.*, for *W. W. Ruff*, County Hall, Kingston-upon-Thames); *P. W. Medd* (*Neish, Howell and Haldane*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

JURY: LIBEL: WHETHER INTERVENTION PREMATURE: WHETHER DIRECTION NECESSARY

Beevis *v.* Dawson and Others

Finnemore, J., and a jury. 1st May, 1956

Jury action.

In an action for damages for libel the defendants pleaded justification, and at the trial both justification and publication were in issue before the jury. The plaintiff did not give evidence himself but a number of other witnesses were called on his behalf, and at the conclusion of their evidence counsel for the plaintiff said: "That is the plaintiff's case." Some of the evidence as to publication given by the witnesses called by the plaintiff was such as unexplained and unanswered might have raised doubts in the mind of the jury as to his bona fides in bringing the action, and counsel for the defendants, in the course of his opening speech, invited the jury to stop the case and award the plaintiff a very small sum of money. Before the conclusion of the evidence for the defendants the jury, having retired at their own request, expressed the view that the plaintiff should receive one farthing damages. No direction at summing-up was given by the judge to the jury before they retired. Objection was taken on behalf of the plaintiff to the verdict of the jury and a new trial was asked for on the grounds, *inter alia*, (*a*) that the intervention of the jury was premature since, in view of the plea of justification, the plaintiff had a right to reserve his evidence, and to give it in rebuttal and, therefore, the jury had, in effect, found against him as to character before his case was concluded; and (*b*) that no direction had been given to the jury before they retired.

FINNEMORE, J., said that a jury had a right to stop a case when they had heard sufficient, subject to the proviso that the decision to which they came was one which they could reasonably find on the evidence before them. The case was unusual in that the verdict, formally in favour of the plaintiff, was reached when the evidence for the defence was not concluded, but the defence had not and could not complain about that, because it was what they had asked the jury to do. Although it was improper for counsel

in a civil case to tell a jury that they might stop a case, because that was a thing which only the judge should tell them (see *Alexander* v. *H. Burgoigne & Sons, Ltd.* [1949] 4 All E.R. 568), he, his lordship, did not think that that was a matter which invalidated the trial. There had been some argument whether the right of a plaintiff, where there was a plea of justification, to give evidence in rebuttal was an absolute right or whether it was a matter subject to the discretion of the judge, but the fact that a plaintiff might give evidence in rebuttal did not mean that his case was not closed. When he had called his evidence and said that that was his case, that was the case on which he was asking the jury to decide and to give him damages. Justification was not the only issue raised, and while a plaintiff might be able to keep his evidence on justification to give it in rebuttal, he took the risk that on some other issue, the stage at which he might give evidence in rebuttal would not be reached. As a matter of law his lordship thought that the plaintiff's case had concluded and that the jury were entitled to say that they had heard enough and, on the evidence called by the plaintiff himself, to say that they thought little or nothing of his bona fides in bringing the action. When a jury had intimated that they had come to a decision and had heard all the evidence for the side against whom they were likely to find, it was not the practice to give them a direction. His lordship referred to *Hobbs* v. *Tinling* [1929] 2 K.B. 1, and said that that was a special case where the jury had intervened at the wrong time and had said that they wanted to find for the defendant before the case for the plaintiff had finished. In the present case the jury were entitled to intervene in the way in which they had done and he, his lordship, did not think that it was incumbent on the court, or necessary, to give them any special direction, and he did not feel that their decision was one to which twelve reasonable people could not have come after having heard the evidence. He accepted the verdict of the jury. Judgment for the plaintiff.

APPEARANCES: *Leonard Caplan*, Q.C., and *Norman Tapp* (*C. Butcher & Simon Burns*); *John Platts-Mills* and *R. Gavin Freeman* (*R. K. George*).

[Reported by Miss J. F. LAMB, Barrister-at-Law]

Probate, Divorce and Admiralty Division

HUSBAND AND WIFE: JUSTICES: DIVORCE PETITION DISMISSED: JURISDICTION TO DISCHARGE MAINTENANCE ORDER

Smyth *v.* Smyth

Lord Merriman, P., and Davies, J. 18th April, 1956

Appeal from Lambeth Magistrates' Court.

A husband applied to the metropolitan magistrate sitting at Lambeth Magistrates' Court for the discharge of a maintenance order based on persistent cruelty on the ground that his wife's petition for divorce alleging the same acts of cruelty had been dismissed by the High Court. The magistrate declined to discharge the order, giving as his reason that the matter could "more conveniently be dealt with by the High Court," under s. 10 of the Summary Jurisdiction (Married Women) Act, 1895.

LORD MERRIMAN, P., who referred to *Perks* v. *Perks* [1946] P. 1, said that as a court of summary jurisdiction had power to discharge a magistrate's order, but the High Court had no such power, there was, therefore, no balance of convenience between the two forums and s. 10 of the Summary Jurisdiction (Married Women) Act, 1895, did not apply. Although the case was one of a magistrate who had declined jurisdiction which he ought to have assumed, it was not necessarily to be referred to the Queen's Bench Divisional Court for an order of mandamus, but could be dealt with by way of an appeal to the Divisional Court of the Probate, Divorce and Admiralty Division. On such appeal the court was entitled to exercise its powers under r. 71 (6) of the Matrimonial Causes Rules, 1950, to make the appropriate order, and was not bound to send the matter back to the magistrate with an order to hear and determine. The proper course in the circumstances was to allow the appeal and discharge the order.

DAVIES, J., who concurred, said that in any matter where there was concurrent jurisdiction in a court of summary jurisdiction and in the High Court, that was to say, where the matter might be investigated and determined by either court, then, if in the opinion of the court of summary jurisdiction the matter would be more conveniently dealt with by the High Court, the court of summary jurisdiction might under s. 10 of the Act of 1895 refuse to adjudicate, and there was no appeal, subject to the proviso that the High Court might send the matter back if it thought fit. Appeal allowed.

APPEARANCES: *Basil Garland* (*Lewis & Shaw*); *L. D. E. Cullen* (*Kearton & Co.*).

[Reported by JOHN B. GARDNER Esq., Barrister-at-Law]

SHIPPING: COLLISION: NEGLIGENCE: PORT OF LONDON RIVER BYELAWS, 1938

Georgia* (Owners) *v. Timandra* (Owners) The *Timandra.

Willmer, J. 27th April, 1956

Action.

At about 10.30 p.m. on 15th January, 1953, the plaintiffs' vessel *Georgia* was in collision with the defendants' vessel *Timandra* off Jenningtree Point in the River Thames. Shortly before the collision the *Georgia* was on a down-river course approaching Jenningtree Point and navigating against a tidal stream, well over on the starboard side of the river; and the *Timandra* was approaching the Point well over on the wrong side of the river, on an up-river course. It was agreed between the parties that the collision occurred between the stem of the *Georgia* and the port bow of the *Timandra* at an angle of about 30 degrees, leading aft on the *Timandra*, and that the damage indicated a joint speed of about 5 knots. The plaintiffs claimed that the collision was solely caused by the improper and negligent navigation of those on board the *Timandra*. The defendants denied negligence and counter-claimed against the plaintiffs, alleging that the collision was solely caused by the improper and negligent navigation of those on board the *Georgia* in that, *inter alia*, those on board the *Georgia* had failed to comply with bye-law 42 (*a*) of the Port of London River Bye-Laws, 1938. Bye-law 42 (*a*) of the Port of London River Bye-Laws, 1938, provides that "every steam vessel navigating against the tidal stream shall if necessary in order to avoid risk of collision ease her speed or stop on approaching or when rounding a point or sharp bend so as to allow any vessel navigating with the tidal stream to pass clear of her."

WILLMER, J., after consulting the Elder Brethren, said that in the circumstances the only point which could be made against the *Georgia* was that, being a ship navigating against the tidal stream, she was in breach of bye-law 42 (*a*). It was argued on behalf of the plaintiffs that all that was required of a ship going against the tidal stream, in order to comply with the bye-law, was that she should stop her engines, and on the evidence in this case that was what the *Georgia* did. But the question arose whether stopping the engines was what was meant by the use of the word "stop," or whether rather it should not be interpreted as meaning to stop the ship. The cases under the predecessor to this bye-law showed that there the court had always interpreted it as meaning stopping the ship. The purpose of the bye-law had frequently been described as being to prevent the possibility of the ship going against the tide reaching the point at the same time as the ship which was going with the tide. That was the effect of what was said in *The Libra* (1881), 6 P.D. 139, and in *The Margaret* (1884), 9 App. Cas. 873, which was summed up by Lord Phillimore in the more recent case of *The Hontestroom* [1927] A.C. 37; in the light of that statement it seemed to him that he had to come to the conclusion that, if the bye-law applied at all, the requirement involved was a requirement that the ship should be stopped, if necessary, to avoid risk of collision, and stopped so as not to reach the point simultaneously with the up-coming vessel. In those circumstances, was the presence of the *Timandra* coming up on the wrong side of the river a circumstance producing such a risk of collision as to call into play bye-law 42 (*a*), and to make it necessary, in order to avoid risk of collision, to stop the *Georgia* above the pitch of the point? It was important to observe that the rule only applied if such action was necessary to avoid risk of collision. The proper approach to the matter was to remember the well-worn maxim, that every ship was entitled up to a point to assume that every other ship would do the right thing. There must be many occasions when ships navigating the Thames observed that other ships were momentarily on the wrong side of the river. That necessarily happened in the ordinary course of navigation. But, until the

contrary was proved, it seemed to him that every ship was entitled to assume that the other ship, although for the moment on the wrong side of the river, would get over in good time to her own proper side. On the facts of this case bye-law 42 (*a*) did not add anything to the ordinary requirements of good seamanship. It was impossible to say that the pilot of the *Georgia* was guilty of negligence in not reducing way more drastically or earlier than he did. He found no fault with the plaintiffs; the collision was brought about solely by the improper navigation of the *Timandra*. Judgment for the plaintiffs.

APPEARANCES: *J. V. Naisby*, Q.C., *S. Knox Cunningham* and *Barry Sheen* (*Thomas Cooper & Co.*); *J. Roland Adams*, Q.C., and *J. B. Hewson* (*Holman, Fenwick & Willan*).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

Court of Arches, Canterbury

ECCLESIASTICAL LAW: DISUSED BURIAL GROUND: PROPOSED USER OF PART AS FOOTPATH AND OMNIBUS SHELTER

***In re* St. Mark's Church, Lincoln**

H. U. Willink, Q.C., Dean of Arches. 15th May, 1956

Appeal from Lincoln Consistory Court ([1955] 3 W.L.R. 844; 99 SOL. J. 835).

The vicar and churchwardens of St. Mark's Church, Lincoln, petitioned for a faculty to adapt part of the disused churchyard so that it might be used as a footpath to form part of an omnibus station, and to suspend over that area a roof, which would not be supported from the area in question. The Chancellor allowed the petition so far as the path was concerned, but held that the proposed roof was a "building" within the meaning of s. 3 of the Disused Burial Grounds Act, 1884, and that by virtue of that Act and of the Open Spaces Acts, 1887 and 1906, a faculty for the roof must be refused. The petitioners appealed.

WILLINK, Dean of Arches, said that it was clear from the decision in *In re the Parish of Bideford* [1900] P. 314 that when the purpose for which ground was originally consecrated could no longer be lawfully carried out, the use of it might be authorised for secular purposes though the ownership remained unaffected; there was no objection, therefore, to the use of part of the proposed pathway as an omnibus station. But the Act of 1884 provided that "it shall not be lawful to erect any buildings upon any disused burial ground." No case had been cited which was at all closely analogous. The design of the proposed station involved putting up a roof over a large area, and that was undoubtedly a "building." It had been arranged that such part of the roof as would cover the land in question would be supported from outside, and it was urged that that form of construction avoided the difficulty caused by the Act. But it would be artificial to rely on the fact that "on" or "upon" usually implied contact; it was not possible or in accord with common sense to isolate one part of the roof from another. The proposed building would, in fact, be one erected partly on consecrated land and partly on outside land, and the court had no jurisdiction to permit the use of a disused burial ground for the erection of such a building. Appeal dismissed.

APPEARANCES: *W. S. Wigglesworth* (*M. H. B. Gilmour*); *J. Ellison* (as *amicus curiae*).

[Reported by F. R. DYMOND, Esq., Barrister-at-Law]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal".]

Unsolicited Testimonial

Sir,—On my first visit to the U.S.A. I was passing through customs when the customs officer asked me my occupation, to which I replied "Solicitor." He immediately said "In which case are your samples?" I pointed out that I was not a traveller but a lawyer.

It must be considered an honoured profession in U.S.A. as the customs officer positively refused to open a single piece of luggage but gave me an immediate clearance without even asking whether I had anything to declare.

A. ROBSON.

London, W.4.

"Defense d'uriner sur le Palais de Justice!"

Sir,—The above inscription, from a Continental city where they appear to value legal institutions highly, I commend as a rallying-cry to those who deplore the current fashion for sneering at the architecture of the Royal Courts of Justice, a fashion to which I am sorry to see that Richard Roe now lends his support.

I have always thought that our Law Courts, so far from being architecturally out of fashion, were a pioneer example of what the leaders of fashion in such matters call the "Functional Style." Their function is the dispensation of justice, to which nothing is more necessary than that the witnesses should tell the truth.

And how often have solicitors been afflicted with the witness who, after lying plausibly and convincingly through the Queen Anne of the solicitors' offices, the neo-classical of the coroner's court, and the neo-Georgian of the magistrates' court, has been overcome, on entering the awful atmosphere of R.C.J. Gothic, with the irresistible impulse to tell the truth?

In particular I shall never forget the client whose undefended divorce was heard one 1st of October at 2 p.m. I could have sworn I had extracted that man's discretion statement down to the last peccadillo, but after a morning spent in the Great Hall, with such additional spectacles as the 1st October provides, it was a subdued petitioner who went into the witness box; and when the orthodox question was put, "And have you ever committed adultery except as mentioned in that document?" the court was confounded with the most unorthodox answer, "Well, yes, I'm afraid I often have."

D. L. T.

London, W.C.1.

P.S.—I suppose one should also mention the foreign visitor who, on entering the Law Courts in mistake for St. Pancras, was heard to mutter: "C'est magnifique! Mais ce n'est pas la gare."

THE SOLICITORS' ARTICLED CLERKS' SOCIETY announces the following programme for June, 1956:—

13th June: A New Members' Evening (to which ALL members are cordially invited) will be held at The Law Society's Hall. Refreshments free from 6 p.m. will precede an informal talk by R. E. Megarry, Q.C., on "The Lawyer's Tools of Trade."

21st June: Theatre Party. Details from Clive Kelly (FLE 5718, day only).

28th June: Committee Reception and Cocktail Party. The President of The Law Society, Mr. W. Charles Norton, M.B.E., M.C. (an Honorary Vice-President of S.A.C.S.) will be presenting to the society a presidential badge of office. Members, guests and past members will be welcome. A fully licensed bar and light refreshments will be available. The Law Society's Hall, 6 p.m.

Mr. F. S. Lodder, of South Warwickshire, has been appointed president of the WEST MIDLANDS AND WALES CORONERS SOCIETY in succession to Mr. K. T. Braine-Hartnell, the Stafford coroner, and Mr. W. B. C. Forsyth, deputy coroner for Wolverhampton, has been appointed secretary in succession to Mr. G. W. Huntbach, the North Staffordshire coroner, who has resigned.

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read First Time :—

Agriculture (Safety, Health and Welfare Provisions) Bill [H.C.] [30th May.

Occupiers' Liability Bill [H.L.] [31st May.

To amend the law of England and Wales as to the liability of occupiers and others for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there; to make provision as to the operation in relation to the Crown of laws made by the Parliament of Northern Ireland for similar purposes or otherwise amending the law of tort, and for purposes connected therewith.

Slum Clearance (Compensation) Bill [H.C.] [30th May.

Read Second Time :—

Chertsey Urban District Council Bill [H.C.] [30th May.

Hotel Proprietors (Liabilities and Rights) Bill [H.C.] [29th May.

Leeds Corporation Bill [H.C.] [30th May.

Local Government Elections Bill [H.C.] [31st May.

London County Council (Money) Bill [H.C.] [30th May.

People's Dispensary for Sick Animals Bill [H.C.] [30th May.

Read Third Time :—

Manchester Corporation Bill [H.L.] [29th May.

Tyne Tunnel Bill [H.L.] [29th May.

Walthamstow Corporation Bill [H.L.] [29th May.

In Committee :—

Clean Air Bill [H.C.] [30th May.

Occasional Licences and Young Persons Bill [H.C.] [29th May.

Sugar Bill [H.C.] [31st May.

HOUSE OF COMMONS

PROGRESS OF BILLS

Read First Time :—

Hill Farming Bill [H.C.] [31st May.

To extend the time within which livestock rearing land improvement schemes may be submitted under the Hill Farming Act, 1946, increase the maximum amount that may be paid in the aggregate by way of grants in respect of the cost of work done in accordance with such schemes and extend the time within which the said maximum may be further increased by order of the Minister of Agriculture, Fisheries and Food and the Secretary of State; and to prolong the powers under that Act of those Ministers to make subsidy payments in respect of hill sheep and hill cattle.

Read Second Time :—

Pier and Harbour Provisional Order (Great Yarmouth Port and Haven) Bill [H.C.] [30th May.

Pier and Harbour Provisional Order (Wisbech Port and Harbour) Bill [H.C] [30th May.

Read Third Time :—

Administration of Justice Bill [H.L.] [1st June.

Charity of Frances Barker and Certain Other Charities (City of York) Bill [H.C.] [1st June.

Consolidated Municipal Charity and Certain Other Charities (Ludlow) Bill [H.C.] [1st June.

Dover Corporation Bill [H.L.] [29th May.

Hospital of Robert Earl of Leicester Charity (Warwick) Bill [H.C.] [1st June.

Road Traffic Bill [H.C.] [1st June.

Sutton's Hospital (Charterhouse) Charity Bill [H.C.] [1st June.

In Committee :—

Death Penalty (Abolition) Bill [H.C.] [29th May.

STATUTORY INSTRUMENTS

Coffin Furniture and Cerement-Making Wages Council (Great Britain) Wages Regulation Order, 1956. (S.I. 1956 No. 779.) 8d.

Crofters, etc., Building Grants (Scotland) Regulations, 1956. (S.I. 1956 No. 775 (S. 37).) 8d.

Ipswich — Newmarket — Cambridge — St. Neots — Bedford — Northampton—Weedon Trunk Road (Warrington Diversion) Order, 1956. (S.I. 1956 No. 762.)

Keadby Light Railway Order, 1956. (S.I. 1956 No. 749.) 8d.

Draft **Lace Furnishings** Industry (Export Promotion Levy) (Revocation) Order, 1956.

Draft **Merchandise Marks** (Imported Goods) No. 1 Order, 1956.

Probation (Scotland) Amendment Rules, 1956. (S.I. 1956 No. 800 (S. 38).) 5d.

Retention of Cables under Highways (Bedfordshire) (No. 1) Order, 1956. (S.I. 1956 No. 751.)

Rhondda Water Order, 1956. (S.I. 1956 No. 777.) 5d.

South Staffordshire Water (Financial Provisions) Order, 1956. (S.I. 1956 No. 782.)

Stopping up of Highways (Berkshire) (No. 4) Order, 1956. (S.I. 1956 No. 763.)

Stopping up of Highways (Cheshire) (No. 3) Order, 1956. (S.I. 1956 No. 758.)

Stopping up of Highways (Essex) (No. 8) Order, 1956. (S.I. 1956 No. 764.)

Stopping up of Highways (Essex) (No. 9) Order, 1956. (S.I. 1956 No. 746.)

Stopping up of Highways (Essex) (No. 11) Order, 1956. (S.I. 1956 No. 747.)

Stopping up of Highways (Exeter) (No. 1) Order, 1956. (S.I. 1956 No. 752.)

Stopping up of Highways (Hertfordshire) (No. 5) Order, 1956. (S.I. 1956 No. 759.)

Stopping up of Highways (Kent) (No. 15) Order, 1956. (S.I. 1956 No. 748.)

Stopping up of Highways (Kent) (No. 17) Order, 1956. (S.I. 1956 No. 765.)

Stopping up of Highways (Kent) (No. 18) Order, 1956. (S.I. 1956 No. 766.)

Stopping up of Highways (Leicestershire) (No. 9) Order, 1956. (S.I. 1956 No. 761.)

Stopping up of Highways (Leicestershire) (No. 10) Order, 1956. (S.I. 1956 No. 755.)

Stopping up of Highways (Middlesex) (No. 4) Order, 1956. (S.I. 1956 No. 756.)

Stopping up of Highways (Portsmouth) (No. 4) Order, 1956. (S.I. 1956 No. 767.)

Stopping up of Highways (Wiltshire) (No. 3) Order, 1956. (S.I. 1956 No. 768.)

Stopping up of Highways (Worcestershire) (No. 10) Order, 1956. (S.I. 1956 No. 753.)

Stopping up of Highways (Worcestershire) (No. 11) Order, 1956. (S.I. 1956 No. 754.)

Stopping up of Highways (Worcestershire) (No. 12) Order, 1956. (S.I. 1956 No. 769.)

Teachers Superannuation (Army Children's Schools) Scheme, 1956. (S.I. 1956 No. 770.)

Teachers Superannuation (Royal Naval Schools) Scheme, 1956. (S.I. 1956 No. 771.)

Wages Regulation (Unlicensed Place of Refreshment) (Amendment) Order, 1956. (S.I. 1956 No. 760.) 8d.

Wool (Determination of Period) Order, 1956. (S.I. 1956 No. 788.)

[Any of the above may be obtained from the Government Sales Department, The Solicitors' Law Stationery Society, Ltd., 21 Red Lion Street, London, W.C.1. The price in each case, unless otherwise stated, is 4d., post free.]

NOTES AND NEWS

Honours and Appointments

Mr. JOHN DOUGLAS KEWISH has been appointed joint Registrar of the Liverpool County Court and joint District Registrar in the District Registry of the High Court of Justice in Liverpool.

Mr. G. L. MAY has been appointed solicitor to the South Eastern Gas Board, in succession to Mr. R. G. HUXTABLE, M.B.E., who has been appointed secretary.

Mr. B. SLATER, assistant solicitor to Huddersfield Corporation, has been appointed to a similar post with Birmingham Corporation.

Mr. IVOR HAROLD KELLAND THORNE, deputy town clerk of Colchester, has been appointed clerk of Neath Rural Council, in succession to Mr. A. H. COLLEY, who has been appointed clerk of Hemsworth Rural Council.

Personal Notes

Mr. Richard Paul Brooks, solicitor, of Huddersfield, was married on 28th May to Miss Margaret Dyson, of Mirfield.

Mr. John Stallard, believed to be Britain's oldest solicitor, celebrated his 99th birthday on 31st May by going to work as usual in his office at Worcester.

Miscellaneous

DEVELOPMENT PLANS

CITY OF PORTSMOUTH DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the City of Portsmouth. The plan, as approved, will be deposited in the city council chambers for inspection by the public.

COUNTY OF WEST SUFFOLK DEVELOPMENT PLAN

Notice is hereby given that proposals for alterations or additions to the above development plan were on 18th May, 1956, submitted to the Minister of Housing and Local Government.

The proposals relate to land situate within the under-mentioned districts.

A certified copy of the proposals as submitted has been deposited for public inspection at the Shire Hall, Bury St. Edmunds.

Certified copies of the proposals or certified extracts thereof so far as they relate to the under-mentioned districts have also been deposited for public inspection at the places mentioned below :—

Haverhill :

Haverhill U.D.C. Council Offices.

Clare :

Clare R.D.C., Rural District Council Offices, Stonehall.

The copies or extracts of the proposals so deposited together with copies or relevant extracts of the plan are available for inspection free of charge by all persons interested at the places mentioned above between the hours of 10.30 a.m. and 4 p.m. on Mondays to Fridays inclusive, and 10.30 a.m. to 12 noon on Saturdays.

Any objection or representation with reference to the proposals may be sent in writing to the Secretary, Ministry of Housing and Local Government, Whitehall, London, S.W.1, before 31st July, 1956, and any such objection or representation should state the grounds on which it is made. Persons making an objection or representation may register their names and addresses with the West Suffolk County Council and will then be entitled to receive notice of any amendment of the plan made as a result of the proposals.

WARWICKSHIRE DEVELOPMENT PLAN

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Warwickshire. The plan, as approved, will be deposited in the Shire Hall, Warwick, for inspection by the public.

EAST AND WEST HAM DEVELOPMENT PLANS

The Minister of Housing and Local Government has approved with modifications the development plans for the County Boroughs of East and West Ham. The plans, as approved, will be deposited in the respective Town Halls, for inspection by the public.

ROYAL COMMISSION ON COMMON LAND

Continuing its series of visits to typical common lands in various parts of England and Wales, the Royal Commission has now arranged to meet in Kendal, Westmorland, on 12th and 13th July next. On Thursday, 12th July, it will hold a public sitting for the hearing of oral evidence in the Council Chamber, County Hall, Kendal. On the following day it will tour some of the common lands in the Lake District and the neighbouring areas. Persons wishing to submit evidence to the Royal Commission are invited in the first instance to send their views in writing to the Secretary of the Royal Commission at 26 Sussex Place, Regent's Park, London, N.W.1. The Commission will decide in the light of written evidence received which witnesses it wishes to invite to give supplementary oral evidence.

The Royal Commission's programme for the next two months is :—

Witness	*Date and time of Hearing*	*Place*
Prof. E. T. Jones, M.Sc., Director of the Welsh Plant Breeding Station, Aberystwyth.	20th June, 10.30 a.m. onwards.	County Hall, Llandrindod Wells, Radnorshire.
Col. F. S. Morgan, C.B.E., D.L.	20th June.	County Hall Llandrindod Wells, Radnorshire.
Other witnesses have also been invited.		
	21st June.	Visit to neighbouring commons.
The Friends of the Lake District have been, and other witnesses may also be, invited.	12th July, 10.30 a.m. onwards.	The Council Chamber, County Hall, Kendal, Westmorland.
	13th July.	Visit to some of the common lands in the Lake District and the neighbouring areas.

Wills and Bequests

Mr. William Henry Milnes Marsden, retired solicitor, of Darley Abbey, Derbyshire, left £50,603 (£50,534 net).

Mr. George Southwell Stevens, solicitor, of Norwich, left £17,176.

Mr. Russell Godfrey Steward, solicitor, of Old Catton, Norfolk, left £71,055 (£69,841 net).

OBITUARY

MR. H. L. SMEDLEY

Mr. Hugh Lionel Smedley, retired legal adviser and solicitor to the Railway Executive, died on 23rd May, aged 70. He was admitted in 1908.

MAJOR R. H. H. WHITEHEAD

Major Reginald Henry Hughes Whitehead, M.C., solicitor, of Cambridge, late of the Colonial Service, West Africa, died on 27th May, aged 73. He was admitted in 1904.

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